

Panaji, 4th April, 2024 (Chaitra 15, 1946)

SERIES II No. 1

# OFFICIAL GAZETTE

## GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

*Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 52 dated 28-03-2024 namely, Extraordinary dated 28-03-2024 from pages 1511 to 1512 regarding Notifications from Department of Transport.*

### GOVERNMENT OF GOA

#### Department of Co-operation

Office of the Asstt. Registrar of Co-operative Societies

No. 1-25/11-12/ARPZ/Serv/Reg/3196

- Read: 1. Certificate of Registration dated 25-01-1964 of Dharbandora V.K.S.S. Society Ltd., Dharbandora-Goa.
2. This Office Order No. 1-25/11-12/ARPZ/ /Serv/Reg/3010 dated 27-02-2024.
3. This Office Memo No. 1-25/11-12/ARPZ/ /Serv/Reg/3181 dated 22-03-2024.

Consequent upon the change in classification vide amendment at Sr. No. 03 of above, the Certificate of Registration of the Dharbandora V.K.S.S. Society Ltd., Dharbandora-Goa is amended as under:

#### Amended Certificate of Registration

The Certificate of Registration dated 25-01-1964 bearing registration code symbol RES-(C)-154/Goa stands amended as ARCS/PZ/Ser-Reso/MP/23/Goa with immediate effect to the following extent.

The sub-classification of the society appearing in the Registration Certificate referred at Sr. No. 1, be read as the Dharbandora Multipurpose Co-operative Primary Agriculture Credit Society Ltd., Dharbandora-Goa under classification No. 10(C) under sub-rule (1) of Rule 8 of the Goa Co-operative Societies Rules, 2003.

*Pankaj V. Marathe*, Asst. Registrar (Co-operative Societies), Ponda Zone.

Ponda, 22nd March, 2024.

#### Aditya Harmony Co-op. Housing Maintenance Society Limited

Madel, Tivim, Bardez, Goa-403502

Reg. No. RCSNZ2022-230029

Ref. No. AHCHMSL/2023-2024/024

#### Final List of Members as per Membership Registers maintained

Sr. No.	Sr. No. in the members register (G Form)	Name of the member and his Flat/House No.	Date of admission to membership	No. of fully paid up shares held	Remarks
1	2	3	4	5	6
1.	01	Mrs. Vishaya Vishwas Kauthankar A-402 Miss. Sneha Vishwas Kauthankar	02-02-2023	Five	
2.	02	Mr. Shankar Kamlakant Lotlikar C-202 Mrs. Gauri Shankar Lotlikar	02-02-2023	Five	

1	2	3	4	5	6
3.	03	Mr. Norman Sequeira Mrs. Betty Sequeira	B-202	02-02-2023	Five
4.	04	Mr. Amol Anand Rawool Mrs. Leena Amol Rawool	B-203	02-02-2023	Five
5.	05	Mr. Sushant Sitaram Govekar Mrs. Harshada Sushant Govekar	C-402	02-02-2023	Five
6.	06	Mr. Wockhardt Martis Mrs. Sandra Martis	C-204	02-02-2023	Five
7.	07	Mrs. Smita S. Naik Mr. Shailesh K. Naik	A-304	02-02-2023	Five
8.	08	Mrs. Shweta Ashok Pednekar alias Mrs. Shweta Mukund Ukshekar Mr. Mukund V. Ukshekar	C-104	02-02-2023	Five
9.	09	Mr. Rajan Zilu Morajkar Mrs. Ruchika Rajan Morajkar	A-401	02-02-2023	Five
10.	10	Mrs. Jeevika Jayesh Pednekar Mr. Jayesh Vithal Pednekar	C-403	02-02-2023	Five
11.	11	Mr. Sarvesh Manohar Thakur	A-302	02-02-2023	Five
12.	12	Mrs. Gladys Vessoaker	C-302	02-02-2023	Five
13.	13	Mr. Avadhut Yeshwant Prabhu Chodnekar Mrs. Gayatri Ramnath Nayak	B-201	02-02-2023	Five
14.	14	Mr. Rajesaheb Gothed Mrs. Raziya Gothed	A-204	02-02-2023	Five
15.	15	Mr. Narayan Suresh Harmalkar Mrs. Rashmee Narayan Harmalkar	A-403	02-02-2023	Five
16.	16	Mrs. Smita Prasad Dhargalkar	A-201	02-02-2023	Five
17.	17	Mrs. Rupali Vishnu Gawade Mr. Hemant Mohan Gawade	B-303	02-02-2023	Five
18.	18	Mr. Mahesh Chandrakant Naik Mrs. Sulaksha Naik	A-103	02-02-2023	Five
19.	19	Mr. Sagar Chandrakant Bhosale	C-101	02-02-2023	Five
20.	20	Mr. Agnello Augustinno Dcosta	C-401	02-02-2023	Five
21.	21	Mr. Vishwas Dattaram Naik	B-302	02-02-2023	Five
22.	22	Mrs. Steffy Mathew Mr. Rahul Varghese Chitteen	A-101	02-02-2023	Five
23.	23	Mr. Ranjit Laxman Kole Mrs. Nivedita Kole	C-201	02-02-2023	Five
24.	24	Ms. Sunita Tulshidas Chattim Haldankar	C-103	02-02-2023	Five
25.	25	Mr. Jitendra Prakash Pednekar	A-404	02-02-2023	Five
26.	26	Mr. Pedro Agnelo Dias Mrs. Aramita Dias	B-102	02-02-2023	Five
27.	27	Mrs. Fiona Maria Sequeira	C-203	02-02-2023	Five

1	2	3	4	5	6
28.	28	Mrs. Gauri Govind Masurkar alias B-204 Mrs. Gauri Rajesh Mahale Mr. Rajesh Mahale	02-02-2023	Five	
29.	29	Mr. Rahul Kusaji Gawas A-203 Mrs. Sandhya Rahul Gawas	02-02-2023	Five	
30.	30	Mr. Dilip Mavji Patel B-401 Mrs. Chandrika Dilip Patel	02-02-2023	Five	
31.	31	Mrs. Pramila Mavji Patel B-403	02-02-2023	Five	
32.	32	Mr. Sarfaraj Shaikh A-102 Mrs. Darshana Sarfaraj Shaikh	02-02-2023	Five	
33.	33	Miss Viral Dilip Patel B-402	02-02-2023	Five	
34.	34	Mr. Shankar Mavjibhai Patel B-404 Mrs. Nimita Shankar Patel	02-02-2023	Five	
35.	35	Mr. Vishv Veer Singh A-301	02-02-2023	Five	
36.	36	Mr. Prakash Nauso Pednekar A-104	02-02-2023	Five	
37.	37	Mrs. Vandana Gokuldas Raikar C-301 Mr. Gokuldas Ramnath Raikar	02-02-2023	Five	
38.	38	Mr. Gabriel Simplicio Almeida C-303	02-02-2023	Five	
39.	39	Mrs. Arati R. Sawant B-301 Mr. Rama P. Sawant	02-02-2023	Five	
40.	40	Mr. Pramod Baburao Kiwande B-304 Mrs. Pranita Baburao Kiwande	02-02-2023	Five	
41.	41	Mr. Amit Mahendra Madhu C-102 Mrs. Gargi Amit Madhu	02-02-2023	Five	
42.	42	Mr. Anubhav Ramnath Raikar B-104	02-02-2023	Five	
43.	43	Mrs. Nandini Raja Tulaskar B-101	02-02-2023	Five	
44.	44	Mrs. Meghna Deepak Patil B-103	15-08-2023	Five	
45.	45	Mr. Firoz Khan Asad Khan Inamdar C-304	15-08-2023	Five	
46.	46	Mr. Ridam Ramdas Prabhu Gaonkar C-404 Mr. Ramdas Cuxali Gaocar	15-08-2023	Five	
47.	47	Mr. Brendan Savio D'Silva A-303	15-08-2023	Five	
48.	48	Mr. Vishal Prakash Gauns A-202 Miss. Pooja Uday Mhadeshri alias Mrs. Pooja Vishal Gauns	05-08-2023	Five	

Sd/-, Chairperson/Secretary.

Thivim, 22nd March, 2024.

## Kamat Abode Wadde Socorro Co-op. Hsg. Sty. Ltd.

Reg. No. HSG-(b)-324/NZ/Goa

Vaddem, Socorro, Bardez 403501, Goa

## Final List of Voters of

Kamat Abode Wadde Socorro Co-op. Housing Co-op. Society Ltd., Vaddem, Socorro  
as on 26th February, 2024

Reg. & Share Cert. S.N.	Name of the Member	Flat No.
1	2	3
4		
1.	Mr. Prashant Y. Gurav & Mrs. Sonali P. Gurav	Member C-104
2.	Mr. Harish A. Gaitonde	Member B-04
3.	Mrs. Aachal Abhijit Kerkar	Member B-201
4.	Mr. Alexio D'souza	Member C-03
5.	Mrs. Sarita Singh & Mr. Luis Jerome Benedict Pinto	Member C-102
6.	Mrs. Irene D'souza & Mr. C. F. D'souza	Member A-103
7.	Mrs. Sarita Singh	Member C-101
8.	Mr. Laximan alias Laxman Bhiku Fondekar & Mrs. Rashmi L. Fondekar	Member B-01
9.	Mr. Oswald Fernandes	Member B-204
10.	Neena Bhuvad & Mohan G. Bhuvad	Member B-104
11.	Namrata E. Lotlikar	Member B-202
12.	Joseph S. D'souza & Fatima M. D'souza	Member B-02
13.	Sruhid B. Vernekar	Member B-102
14.	Shridhar C. Acharya	Member C-02
15.	Amit Sarkar	Member A-204
16.	Mary D'souza & Kiran Norman D'souza	Member B-03
17.	Mrs. Bridget Fernandes & Mr. Neil Domnic Fernandes	Member A-101
18.	Kalinand Suresh Sawant	Member A-04
19.	Medha Ashok Tamanekar & Mrs. Asmita A. Tamanekar	Member B-203
20.	Diogo Anthony D'souza & Sybil Ann D'souza	Member A-201
21.	Dharmesh M. Bhatt & Seema Bhatt	Member A-202
22.	Mrs. Noreen C. Soares	Member C-04
23.	Vishwasrao Damania	Member A-02
24.	Mr. Robert Vaz	Member C-202
25.	Kum. Nyra DeSouza (minor)	Member A-01
26.	Mr. Shambhu Kamat	Member C-203
27.	Mr. Dattaram P. Kamat	Member C-204
28.	Mr. Diogo Mathew Mendes & Mrs. Josefina Mendes	Member C-201
29.	Deepak G. Ambre & Rupa D. Ambre	Member B-101
30.	Mrs. Bridget Fernandes & Mr. Nigel Justin Fernandes	Member A-102
31.	Shilpa V. Gawas & Mr. Navanath Gawas	Member C-01
32.	Mr. Anthony Fernandes	Member A-104
33.	Verginia Gloria Romilla D'souza	Member A-203
34.	Mrs. Clementine Fernandes	Member B-103
35.	Mr. Michael Caetano D'souza	Member A-03
36.	Mr. Subodh S. Walwaiker & Mrs. Manik S. Walwaiker	Member C-103

Bridget Fernandes, Administrator.

Socorro, 26th February, 2024.

Samarth Enclave Co-operative Housing Maintenance Society Ltd.  
Dinesh Nagar, Ella, Se Old Goa, Goa

List of Members/Voters in Samarth Enclave

Sr. No.	Name	Flat Number
1	2	3
1.	Mrs. Vrunda Vernekar	ASF-1
2.	Mr. Antonio Caetano Azavedo	BSF-2
3.	Mr. Hemkant P. Sawardekar	BUGF-3
4.	Mr. Joaquim Clarence Gomes	DUGF-1
5.	Mrs. Rohini Pande Ambekar	DSF-3
6.	Mrs. Satya Naqvi and Mr. Mobin Naqvi	ASF-4
7.	Mr. Aviratna Janjal	DSF-4
8.	Mrs. Vijayalaxmi Kapil Changrani	CSF-2
9.	Mr. Hanumant Ulagappa Burkatti and Mrs. Veena Shamiraj Chawan	BUGF-4
10.	Mr. Dheeraj Vitho Lambor and Mrs. Swati Dheeraj Lambor	CSF-4
11.	Mr. Anil M. Dubhashi	BSF-1
12.	Mr. Melzer Paul Pinto and Mrs. Melissa J. Carvalho Pinto	DFF-2
13.	Mr. Charlton E. Gomes	CUGF-1
14.	Mrs. Laxmi V. Sukhathanker	AFF-2
15.	Mr. Ruderic J. DSouza	DUGF-2
16.	Mrs. Audrey Antonette D'Mello	BSF-4
17.	Mrs. Seema V. Kanekar	BSF-3
18.	Mr. Udai M. Paranjape and Mrs. Pramila U. Paranjape	CSF-1
19.	Mr. Anil Eugene Fernandes	BUGF-1
20.	Mrs. Ruby Rodrigues	CFF-4
21.	Mr. Hermenegildo Fernandes	ASF-3
22.	Mrs. Lata Shankar	ATF-1
23.	Mr. Gopal Kelkar and Mrs. Usha Gopal Kelkar	AFF-1
24.	Mrs. Hemalatha Shashidhara and Shashidhara Gururaja	BFF-3
25.	Miss Harshad Satoskar	BFF-1
26.	Mr. Raya Manmohan Kudchadker and Mr. Manmohan R. Kudchadker	AFF-3
27.	Mr. Siddesh Shripad Naik	CTF-2
28.	Mr. Noel Leonard Josh and Mrs. Odette Josh	DTF-1
29.	Mr. Rahul Pratik Deshpande	CSF-3
30.	Dr. Uthappa A. R.	DFF-4
31.	Mr. Vinayak Jagannath Fadte	CUGF-4
32.	Mrs. Aruna Bedi and Mr. Vijay Bedi	ESF-3
33.	Dr. Susitha Rajkumar and Dr. Racharla Solomon Rajkumar	DSF-2

1	2	3
34.	Mrs. Devina Dilip Banodkar	DFF-3
35.	Mr. Milburn Pinto and Mrs. Sharon Lasrado	EUGF-3
36.	Mrs. Samina Tonse	ETF-3
37.	Mr. Sameer Vasant Nanaware and Mrs. Dipali Sameer Nanaware	BTF-1
38.	Dr. Edna Antony and Dr. Mahmadali Budansab Dodamani	EUGF-1
39.	Mrs. Sohana Shariff	DFF-1
40.	Mr. Prahlad Mangesh Sukhthankar and Mrs. Sabreen Prahlad Sukhthankar	DSF-1

Sd/- (Dheeraj Vitho Lambor), Chairman.

Panaji, 15th March, 2024.

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## Department of Fisheries

Directorate of Fisheries

### Order

No. DF/ADMN/DEP/FISH/VOL.I/88/6523

In pursuance to Clause 5 of the Right to Information Act, 2005 (hereinafter referred to as “the said Act”), the following officer/officials are hereby appointed as Public Information Officer for the Directorate of Fisheries, to deal with the applications received from the public under the said Act.

Sr. No.	Name & designation of the Public Information Officer	Name & designation of the 1st Link Public Information Officer	Name & designation of the 2nd Link Public Information Officer	Jurisdiction
1	2	3	4	5
1.	Smt. Megha Kerkar, Supdt. of Fisheries, General Branch	Smt. Zigyasa Murkar, Supdt. of Fisheries., Aquaculture & Marketing Section	Kum. Rohita Naik, Supdt. of Fisheries, Enforcement & Offshore	State of Goa.
2.	Smt. Zigyasa Murkar, Supdt. of Fisheries, Aquaculture & Marketing Section	Shri Chandresh Haldankar, Supdt. of Fisheries, Fisheries Training Centre	Smt. Megha Kerkar, Supdt. of Fisheries, General Branch	State of Goa.
3.	Kum. Rohita Naik, Supdt. of Fisheries, Enforcement & Offshore	Smt. Megha Kerkar, Supdt. of Fisheries, General Branch	Shri Chandresh Haldankar, Supdt. of Fisheries, Fisheries Training Centre	State of Goa.
4.	Shri Chandresh Haldankar, Supdt. of Fisheries, Fisheries Training Centre	Kum. Rohita Naik, Supdt. of Fisheries, Enforcement & Offshore	Smt. Zigyasa Murkar, Supdt. of Fisheries, Aquaculture & Marketing Section	State of Goa.
5.	Dr. Sunita Pauskar, Supdt. of Fisheries, North Block	Smt. Preetam Naik, Supdt. of Fisheries, South Block	Smt. Varsha Naik Dessai, Supdt. of Fisheries, Central Block	State of Goa.

1	2	3	4	5
6.	Smt. Preetam Naik, Supdt. of Fisheries, South Block	Smt. Varsha Naik Dessai, Supdt. of Fisheries, Central Block	Dr. Sunita Pauskar, Supdt. of Fisheries, North Block	State of Goa.
7.	Smt. Varsha Naik Dessai, Supdt. of Fisheries, Central Block	Dr. Sunita Pauskar, Supdt. of Fisheries, North Block	Smt. Preetam Naik, Supdt. of Fisheries, South Block	State of Goa.
8.	Smt. Janaki R. Govenkar, Office Suptd., Establishment Section	Smt. Sheetal Naik, R.A. Planning & Statistic	Shri Sandeep Naik, Assistant Accounts Officer, Accounts Section	State of Goa.
9.	Shri Sandeep Naik, Assistant Accounts Officer, Accounts Section	Smt. Janaki R. Govenkar, Office Suptd., Establishment Section	Smt. Sheetal Naik, R.A. Planning & Statistic	State of Goa.
10.	Smt. Sheetal Naik, R.A. Planning & Statistic	Shri Sandeep Naik, Assistant Accounts Officer, Accounts Section	Smt. Janaki R. Govenkar, Office Suptd., Establishment Section	State of Goa.

The Assistant Public Information Officer shall on receipt of the applications for information or appeal under the RTI Act forwarded the same forthwith to the Public Information Officer, as required under sub-section (1) of Section 7.

The Public Information Officer shall on receipt of a request under Section 6 as expeditiously as possible and in any case within thirty days of the request, either provides the information on payment of such fees as may be prescribed or reject the request for any of the reasons of the specified under Section 8 & 9.

The above designated officer/officials shall exercise and perform the powers/functions laid down under the RTI Act, 2005 with immediate effect.

The Dy. Director of Fisheries Shri Chandrkant Velip will be the First Appellant Authority for General Branch, South Zone, Central Zone and Offshore/Enforcement Section under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer.

The Dy. Director of Fisheries Dr. Smita Mazumdar will be the First Appellant Authority for Aquaculture/Marketing, Fishermen Training Centre/Ela/Keri Farms and North Zone under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer.

The Dy. Director of (Admn.) Shri Nehal Talaunekar will be the First Appellant Authority for Planning & Statistics, Establishment and Accounts Section under this Act to hear the appeals against the decision of the Public Information Officer and Assistant Public Information Officer.

This supersedes all earlier RTI orders.

Dr. *Shamila Monteiro*, Director (Fisheries).

Panaji, 15th March, 2024.

## Goa Human Rights Commission

Office of the Goa Human Rights Commission

—  
**Before the Human Rights Commission**  
**Panaji-Goa**

Proceeding No. 302/2016

*Put up file,*  
*25/5/22*  
*25/5/22*

Alcina Fernandes,  
 President, Social  
 Justice Forum

..... Complainant.

V/s

Member Secretary,  
 Goa State Pollution Control  
 Board and ors.

..... Respondents.

Report on the recommendation made by this  
 Commission.

**May it please your Honour**

The Respondent No. 1 respectfully hereby  
 submits the report as per recommendation dated  
 15-03-2022 and state that, the delay in submitting  
 the report as per the Order dated 15-03-2022 be  
 condoned and the report be taken on records. Copy  
 enclosed;

*[Signature]*

Advocate for Respondent No. 1

Place: Panaji,

Date: 23-05-2022.

*[Signature]*  
*23/5/22*

Goa State Pollution Control Board  
 (An ISO 9001:2015, ISO 14001:2015,  
 ISO 45001:2018 Certified Board)

No. 11/2/22-PCB/Legal/2815

To,

Adv. Joaquim Godinho,  
 Navelkar Trade Centre,  
 Off. No. C/S-3, IInd Floor, M.G. Road,  
 Opp. Azad Maidan, Panaji-Goa.

Sub.: Report/comments of the Board to be filed  
 before Human Right Commission in  
 Proceeding No. 302/2016, Alcina Fernandes  
 V/s GSPCB and Goa Carbon.

Sir,

The report/comments of the Board to be filed  
 before Human Rights Commission with reference of  
 recommendations made by Hon'ble Human right  
 Commission vide Order dated 15-3-2022 are as  
 follows:

15	We make the following recommendations	Action
a.	The Respondent No. 1 shall install Ambient Air Monitoring Equipments at different locations identified by the Complainants and carry out the monitoring at least over a period of one year and shall take into consideration the reports while issuing the permission to operate the unit/	Board will install the AAQM equipment for the period of one year and carry out monitoring of the particulate matters and decide accordingly on the consent to operate based on the report.
b.	Regular inspection shall be carried out by the Respondent No. 1 inside the factory and also within a radius of one kilometer from the centre point of the factory and necessary direction shall be given to the Respondant No. 2/to stop the pollution/if any,	As per the CPCB Categorization the unit is categorized as red category.
c.	Whenever the consent to operate the unit of the Respondent No. 2 is given with conditions the Respondent No. 1 shall see to it that all those conditions are complied with within certain prescribed time limit and if not complied with the Repondent No. 1 shall consider whether to withdraw/ /suspend consent	As per the NGT order for monitoring, the unit may be inspected on six monthly basis. For compliance of the consent conditions. As far as external one kilometer is concerned the AAQM will provide the details of pollution if any. Also unit has installed online emmission monitoring for stack.



- Accordingly the renewal of consent to operate will be processed.
- d. No renewal of consent to operate the unit shall be given by the Respondent No. 1 unless all the conditions mentioned in previous consent have been duly complied with
- e. Consent to operate the unit shall not be given by the Respondent No. 1 for more than one year every time from 01-04-2024, when the present consent to operate expires

The Ambient Air Quality Monitoring Comparative Report is also enclosed to produce before Human Rights Commission.

Yours faithfully

Sd/-

Member Secretary (I/c),  
Goa State Pollution Control Board.

**Before the Goa Human Rights Commission  
Panaji-Goa**

Proceeding No. 302/2016

Alcina Fernandes,  
President,  
Social Justice Forum-Sao Jose De Areal,  
H. No. 583/C, Melclive, Igorjewaddo,  
Sao Jose De Areal,  
Salcete, Goa-403709 ..... Complainant.

V/s

1. The Member Secretary,  
Goa Pollution Control Board,  
Saligao, Bardez-Goa
2. Goa Carbon Limited,  
Dempo House,  
Campal, Panaji-Goa ..... Respondents.

**INQUIRY REPORT**

(15th March, 2022)

The aforementioned Complainant has filed the present Complaint dated 24-10-2016, with various authorities including this Commission, regarding

pollution allegedly caused by the factory of Respondent No. 2, situated at Sao Jose De Areal, Salcete-Goa.

2. The Complainant says that the Respondent No. 1 had inspected the Church and the surrounding houses and made an inspection report which clearly indicated that the pollution was due to the emission of the particles from the factory, which does not have control over the said pollution. According to the Complainant, the Company, without complying with the pollution control report, has started the production. The Complainant annexed several documents to the Complaint namely the copies of photographs, Inspection Report of Respondent No. 1, six complaints to Village Panchayat of Sao Jose De Areal, newspapers namely: The Goan dated 23-03-2016, Herald dated 23-03-2016, Herald dated 25-04-2016, Herald dated 03-05-2016 and complaint to the Respondent No. 1.

3. After hearing the Complainant on admission, notice was issued to the Respondent No. 1 to file reply.

4. In response to the notice, on 08-06-2017, the Respondent No.1 filed their reply. The Respondent No. 1, in short, alleged as follows:- Taking into consideration the Inspection Report, they issued directions dated 08-12-2016, under Section 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act, for short) and under Section 33(A) of the Water (Prevention and Control) of Pollution Act, 1974 (the Water Act, for short), to the Company Secretary of M/s. Goa Carbon; the Company was directed to submit compliance report and the Executive Director of the Company filed the reply and compliance report dated 22-12-2016; the Company appeared to have made efforts by adopting various measures as mentioned in the compliance report; the officials of the Respondent No. 1 again carried out inspection of the Unit of M/s. Goa Carbon on 17-04-2017 in the presence of the officials of M/s. Goa Carbon Limited and submitted a report which suggested various recommendations to be complied with by the Unit of Goa Carbon; the stack monitoring of kiln and cooler stack of the factory was conducted at three different locations during the period from 30-01-2017 and 17-02-2017; the Ambient Air Quality Monitoring was done from 02-02-2017 to 16-03-2017 at three different locations and the analytical reports showed that the pollution exceeded the permissible limits; efforts are being made by the Unit to comply with the recommendations in order to reduce the stack emission and to control the pollution. Along with their reply, the Respondent

No. 1 produced copies of various documents namely: directions dated 08-12-2016 under Section 31(A) of the Air Act, given by the Respondent No. 1; inspection report of the Respondent No. 1 dated 18-11-2016 with annexures; reply dated 22-12-2016 of the Respondent No. 2 and inspection report of the Respondent No. 1 dated 23-03-2017 along with annexures.

5. Thereafter on 18-06-2017, in the presence of the President of the Complainant and Special Public Prosecutor on behalf of the Respondent No. 1, it was recorded in the roznama that the records indicate that the Respondent No. 1 has taken appropriate steps in this matter. The Complainant did not object for such recording. The learned Sp. P.P. stated that three months time was granted to the Unit to take certain measures to control pollution by installing equipments and that the Unit has been directed to furnish Bank Guarantee of Rs. 10 lakhs. The learned Sp. P.P. further submitted that in case the Unit fails to adhere to the directives of the Pollution Control Board, the Board shall initiate legal steps against the Company/Unit. On 07-11-2017, the learned Sp. P.P. submitted that Renewal of Consent dated 19-09-2017, valid for 90 days from the date of issue, has been given to the Company to operate the Unit with conditions and that Bank Guarantee of Rs. 10 lakhs has been taken from M/s. Goa Carbon Limited. On 22-11-2017, an application was filed by the Respondent No. 1 thereby stating about the said Consent and Bank Guarantee. Copies of the Consent and the Bank Guarantee were produced. On 12-03-2018, the learned Sp. P.P. produced a copy of the directions dated 15-02-2018, issued by the Member Secretary of the Respondent No. 1, directing the Company to close/suspend the operation of the Unit within a period of 15 days from the receipt of the directions since the operation of the Unit was after the expiry of the Consent dated 19-09-2017 and without obtaining the Renewal. On 04-07-2018, the learned Sp. P.P. produced a copy of the Renewal of Consent dated 07-06-2018 to operate under certain conditions, which was to remain in force for three months i.e. till 07-09-2018. This Consent was in supersession of the earlier Consent Order dated 09-03-2018. On 04-01-2019 the Respondent No. 1 filed Status Report along with several annexures. The Complainant, on 20-03-2019 filed reply to the said status report and produced photographs of the site and a CD-R dated 20-03-2019. On 28-03-2019, the Respondent No. 1, in supersession of earlier Consent Orders issued vide Order No. 5/1985/18-PCB/CI-4850 dated 11-09-2018 and Amendment No. 5/1985/14-PCB/CI-4951 dated 16-11-2018, issued renewal of consent to operate valid upto 31-03-2024, i.e. for five years. On 06-06-2019, it

was reported on behalf of the Complainant that though the Consent to operate the Unit had expired on 31-03-2019, however, the factory Unit was still operating. Hence the Police Investigation Team of this Commission was directed to carry out inspection within a radius of one kilometer from the center point of the factory to ascertain air pollution on account of operation of the Unit. On 04-07-2019, the Police Investigation Team submitted its Inspection Report along with annexures. On 10-06-2020, the Complainant filed reply to the inspection report submitted by the Police Inspection Team and pointed out that the inspection report mentioned that in order to detect respirable dust, fresh ambient air quality monitoring was required to be done in the surrounding area for which the Panchayat and local residents were required to provide sites/locations to carry out the said monitoring. The Respondent No. 1 was therefore asked to clarify about the above. The Police Inspection Team was directed to produce all the photographs which were taken at the site but not produced. On 06-07-2020, reply was filed by the Respondent No. 1 and the Police Inspection Team produced copies of photographs. Say was filed by the Complainant. On 12-11-2020, the Complainant filed application suggesting the premises of which photographs were required to be produced. The Police Inspection Team filed reply to the said application.

6. On 11-02-2021, the Goa Carbon Limited filed application for leave to intervene in the Proceedings. By Order dated 09-04-2021, this Commission allowed the application and the Goa Carbon Limited was added as Respondent No. 2.

7. The Respondent No. 2 filed their reply to the Complaint. They, in short, stated as follows:- The Goa plant, manufacturing Calcined Petroleum Coke (CPC) has been operational for the last more than four decades. The Respondent No. 2 has done its functioning with due care and caution and out of the total 57 workmen, 70% are locals. More than 40 direct and more than 200 indirect employees have been working for the past 20 years without any symptoms of serious illness. The plant has been operational after complying with the applicable statutory permissions and with valid consent to operate issued by the Respondent No. 1 which is valid upto 31-03-2024. Based on the suggestions made by the Respondent No. 1, the Respondent No. 2 has implemented numerous measures to maintain the plant, including investment of Rs. 5 crores to install a state of the art Dust Extraction System (DES)/Air Pollution Control System (APCS) to significantly negate the dust particles. The Complaint is not relevant as the Company has taken

all the necessary measures as directed to be taken by competent authorities and is operating within prescribed norms. The Respondent No. 1 has prepared proficient report dated 10-02-2020 and the Police Investigation Team has also submitted Site Inspection Report. The Respondent No. 2 has taken measures from time to time to control the pollution in the vicinity of the factory (A list of fifteen measures has been given in paragraph 14 of the reply). The Respondent No. 2 has, inter alia, produced renewal of consent dated 28-03-2019, issued by the Respondent No. 1, which is valid upto 31-03-2024, presentation to the dignitaries, report of Respondent No. 1 on Ambient Air Quality, report of Police Investigation Team.

8. The Complainant has filed a rejoinder to the reply of the Respondent No. 2.

9. Final arguments were heard. Adv. Ms. A. Almeida argued on behalf of the Complainant. Adv. Shri J. Godinho argued on behalf of the Respondent No. 1 and Sr. Adv. Shri Sudin Usgaonkar argued on behalf of the Respondent No. 2. We have gone through the entire material on record.

10. It was contended by the Ld. Sr. Advocate of the Respondent No. 2 that the Factory of the Respondent No. 2 has been operational for the last 50 years and that the population in that area has become dense only now and hence the Respondent No. 2 cannot be blamed. It is not the case of the Respondent No. 2 that there are restrictions on residing within the radius of certain distance from the factory and that people are illegally residing there. The above contention of the Respondent No. 2 cannot be accepted since that cannot give right to the Respondent No. 2 to pollute the locality.

11. It was contended by the Ld. Sr. Counsel for the Respondent No. 2 that there is regulatory mechanism, for control of pollution, i.e. the Respondent No. 1 and that private persons cannot be experts and that since the factory of the Respondent No. 2 is operating under valid consent given by the Respondent No. 1, the proper course would be to challenge the order of consent and not to file complaint of violation of human rights. No doubt, anybody can establish and operate industrial plant with the previous consent of the Respondent No. 1 and if consent is wrongly given, the same can be challenged. But it should be kept in mind that the consents given to the Respondent No. 2 were under certain conditions. In their reply filed on 08-06-2017, to the Complaint, the Member Secretary of the Respondent No. 1 has stated that the Ambient Air Quality Monitoring was conducted from

02-02-2017 to 16-03-2017 at three different locations and the analytical results showed that the pollution exceeded permissible limits. The Respondent No. 1 has produced the Inspection Report along with the Ambient Air Quality Monitoring report with analytical report. It is seen from the records that the consent to operate dated 19-09-2017 vide order bearing No. 5/1985/14-PCB/CI-3201 was issued to the unit of the Respondent No. 2 with certain conditions, one of which was to streamline the coke (RCP and CPC) handling activities and to install adequate and effective Air Pollution Control Systems in rotary kiln stack, within 3 months but during inspection it was found that the unit had not installed the Air Pollution Control Systems and the unit was being operated in violation of the Consent condition. That constituted an offence. By order dated 15-02-2018, the Respondent No. 1 had directed the Respondent No. 2 to close/suspend the operation of the unit.

12. The Officials of the Respondent No. 1 had carried out inspection of the locality on 22-03-2015. Coarse black powder particles were seen deposited on the Mangalore tiles and in the balcony of the Church building. In the balcony of the house of Mrs. Alina Fernandes also, coarse black powder particles were seen deposited. The housekeeping inside the factory unit was found to be not satisfactory and coarse particles were found inside the premises. Inspection was again carried out on 18-11-2016. Similar dust particles were found accumulated on the nearby residences near the factory. Such deposits certainly result in undesirable interference with the comfort of the residents. Several recommendations were made by the inspection team after both the inspections. There are photographs produced by the Complainant which show black powder particles on the roof and plants.

13. The Investigation cell of this Commission, as per the direction of the Commission, on 18-06-2019, carried out site inspection within a radius of one kilometer from the central point of the factory. At a distance of about 10 metres from the factory, mango leaves turned black due to deposit of black dust were seen. Within a distance of about 100 metres from the factory, part of the field soil which was not ploughed, was seen black in colour. Black particles were seen in the nullah. Black particles were seen on the roof of the house of Maria Joaquina near the factory. Black dust particles were found inside the houses on the floor, stair cases, balconies, furniture, cars, two-wheelers, coconut leaves, alters/statues of Our Lady of Lourdes Chapel, etc. The Inspection Report says that the consent conditions are partly complied with.

14. The unit of the Respondent No. 2 manufactures Calcined Petroleum Coke from processing of raw Petroleum Coke. This is hazardous. Therefore, pollution is bound to be there and it can cause skin, eye or lung irritation. Air pollution is one of the greatest environmental risks to the health of the people. The lower the pollution, the better the health of the people. Merely because the consent to operate given to the Respondent No. 2 has not been challenged, it cannot be automatically said that the unit of the Respondent No. 2 does not cause pollution. It is seen that every time the consent to operate is given with several conditions but we do not find that serious attempts have been made by the Respondent No. 1 to see if those conditions are strictly complied with. The right to breathe clean air is a human right and air pollution is a violation of human rights. In our considered opinion, some recommendations must be made to the Respondent No. 1.

15. We make the following recommendations:

(a) *The Respondent No. 1 shall install Ambient Air Monitoring Equipments at different locations identified by the Complainants and carry out the monitoring at least over a period of one year and shall take into consideration the reports while issuing the permission to operate the unit;*

(b) *Regular inspection shall be carried out by the Respondent No. 1 inside the factory and also within a radius of one kilometer from the center point of the factory and necessary direction shall be given to the Respondent No. 2, to stop the pollution, if any;*

(c) *Whenever the consent to operate the unit of the Respondent No. 2 is given with conditions, the Respondent No. 1 shall see to it that all those conditions are complied with within certain prescribed time limit and if not complied with, the Respondent No. 1 shall consider whether to withdraw/suspend consent;*

(d) *No renewal of consent to operate the unit shall be given by the Respondent No. 1 unless all the conditions mentioned in previous consent have been duly complied with;*

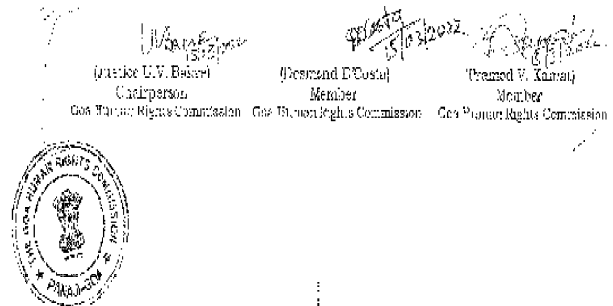
(e) *Consent to operate the unit shall not be given by the Respondent No. 1 for more than for one year every time, from 01-04-2024, when the present consent to operate expires.*

16. Under Section 18(e) of the Protection of Human Rights Act, 1993, the Commission shall send a copy of the Inquiry Report together with its recommendations to the concerned Government or authority and they shall, within a period of one

month from today or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken, to the Commission.

17. Copy of the Inquiry Report be sent to the Respondent No. 1, calling for their comments, including the action taken or proposed to be taken within a period of one month or on or before 18-04-2022, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

The proceeding stands disposed of, accordingly.



Panaji, 15-03-2022.

## Department of Information and Publicity

### Order

No. DI/INF/Hoarding Policy/2024/10998

Sub.: The Goa State Outdoor Advertising Policy, 2024.

The Government has approved the Goa State Outdoor Advertising Policy, 2024 and is duly notified in the Official Gazette.

The Government has appointed the Entertainment Society of Goa as a "Competent Authority" which shall act as one Centralized Agency for grant of permission and for monitoring purpose.

The Government is pleased to constitute an Adhoc Committee to finalise the guidelines and to remove any difficulties in implementation of the Policy and for enacting an appropriate legislation in terms of Clause 5 of the Policy of the following officials:

- |   |             |
|---|-------------|
| 1. Director, DIP, Panaji                                  | — Chairman. |
| 2. Jt. Secretary (Law), Secretariat, Porvorim             | — Member.   |
| 3. General Manager, ESG, Panaji                           | — Member.   |
| 4. Adv. Maria Simone Correia, Government Advocate, Panaji | — Member.   |

5. Secretary, Goa All Goa Hoardings — Member.  
Owners Association, Panaji

6. Jt. Director, DIP, Panaji — Member  
Secretary.

This issues with the approval of the Government vide U.O. No. 11843/F dated March 18, 2024.

By order and in the name of the Governor of Goa.

*Dipak Bandekar*, Director (Information & Publicity)  
& Addl. Secretary.

Panaji, 27th March, 2024.

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**Department of Labour**

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**Notification**

No. 28/02/2024-LAB/72

The following Award passed by the Labour Court-II, at Panaji-Goa on 04-01-2024 in Case No. LC-II/IT/03/2017 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Asha Harmalkar*, Under Secretary (Labour).

Porvorim, 5th February, 2024.

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**THE LABOUR COURT-II**  
**GOVERNMENT OF GOA**  
**AT PANAJI**

**(Before Shri Suresh N. Narulkar, Hon'ble  
Presiding Officer)**

Case No. LC-II/IT/03/2017

Shri Chandan Phadte,  
Rep. by its General Secretary,  
Gomantak Mazdoor Sangh,  
Tisk, Ponda-Goa. .... Workman/Party I

V/s

M/s. Royal Orchid Beach Resort and Spa,  
Utorda Beach, Salcete-Goa. .... Employer/Party II  
Workman/Party I represented by Ld. Adv. Shri S. Gaonkar.  
Employer/Party II represented by Ld. Adv. Shri D. Naik.

Panaji, dated: 04-01-2024

**AWARD**

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 09-01-2017, bearing No. 28/56/2016-LAB/23, referred the following dispute for adjudication to the Labour Court-II at Panaji-Goa, constituted under Section 7 of the said Act.

*"(1) Whether Mr. Chandan Phadte, Manager EDP, can be constructed as "workman" as per Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?*

*(2) If the answer to the issue No. (1) above is in the affirmative, then, whether the action of the management of M/s. Royal Orchid Beach Resort and Spa, Utorda, Beach, Salcete, South Goa, in refusing employment to Mr. Chandan Phadte, Manager EDP, with effect from 03-11-2015, is legal and justified?*

*(3) If the answer to the issue No. (2) above is in the negative, then, what relief the workman is entitled to?"*

2. On receipt of the reference, a case was registered under No. LC-II/IT/03/2017 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed her Statement of Claim on 06-03-2017 at Exb-4. The facts of the case in brief as pleaded by the Workman that he was appointed as EDP Technician by the Employer since 19-06-2014. He stated that the Workman was in continuous service and have completed 240 days continuously during the preceding 12 months. He stated that though the Workman was working as EDP Technician, he was designated as EDP Manager only to take him out of the purview of the Industrial Dispute Act, 1947. He stated that though he was designated as EDP Manager, he was not having any powers of managerial or supervisory and he was physically doing the work of EDP Technician. He stated that he was confirmed in the service w.e.f. 19-12-2014. He stated that on 3-11-2015 he was asked not to join and he will be issued a separate letter by HR-Manager. He stated that he waited for 15 days and made representation to the Management vide his representation dt. 23-11-2015. He stated that after about one week, he raised an industrial dispute of refusal of employment w.e.f. 3-11-2015 before the Dy. Labour Commissioner, Margao through his union. He stated that when the management came to know that the Workman has raised the industrial dispute before the Dy. Labour Commissioner, Margao, the

authorized representative of the Employer has issued a letter dt.1-12-2015 alleging that the Workman remained absent from 3-11-2015 to 24-11-2015 and in the same letter the management has discontinued his services. He stated that on receipt of the said letter dt.1-12-2015 he submitted his reply vide his representation dt. 4-12-2015. He stated that on receipt of the letter dt. 30-11-2015 the Dy. Labour Commissioner called both parties for conciliation which ended in failure on account of adamant attitude of the Employer.

3. The Workman contended that in accordance with the terms of appointment, he had to perform the duties as per orders and instructions from the General Manager of the Employer. He submitted that his normal duties were of technical nature such as installation of Hardware and Software and troubleshooting of Hardware and Software, sending mails and feeding the data etc. He submitted that he was carrying out the above work physically and he was not having any power of Managerial or Supervisory. He submitted that he was doing the work of IT Technician and was feeding the programme in EDP/IT Department. He submitted that he was also performing the duties of clerical nature attached to the EDP/IT Department of the Employer. He submitted that he was not supervising any work nor was he leave sanctioning authority. He submitted that he was doing the work as per the directions of his superior. He submitted that as he was performing Technical and Clerical nature of work, he is a Workman as defined under Section 2(s) of the Industrial Dispute Act, 1947. He submitted that before refusal of his employment the management has not issued any charge-sheet nor conducted any inquiry and as such refusal of his employment is in violation of principles of natural justice. He submitted that the management has not paid nor offered him the legal dues such as retrenchment compensation, gratuity and other dues at the time of refusal of his employment, and as such violated Section 25F of the I.D. Act, 1947. He submitted that after the refusal of his employment, a new Workman was appointed in his place of work and hence violated Section 25H & 25G of the I.D. Act, 1947. He submitted that the Employer has not complied with the provisions of law in force hence, his termination is illegal and bad in law. He submitted that he is therefore entitled for reinstatement along with back wages and continuity in service and consequential benefits thereof. He submitted that after his refusal of service, he is unemployed and could not succeed in getting the employment. The Workman therefore prayed that he may be declared as Workman as defined under Section 2(S) of the I.D. Act, 1947 and

the action of the management in refusing him employment w.e.f. 03-11-2015 be declared as illegal, unjustified and quash the same. The Workman further prayed that he be granted the relief of reinstatement with full back wages and continuity in service along with consequential benefits.

4. The Employer resisted the aforesaid claim of the party-I by filing its written statement on 09-06-2017 at Exb. 5. The Employer, as and by way of its preliminary objections, submitted that the Party-I is not a Workman as defined u/s 2(s) of the I.D. Act, 1947, that the present case does not fall under I. D. Act and hence this court has no jurisdiction to entertain and try the same, that the nature of relief sought by the Party-I is founded on a cause of action purportedly arising from an act committed solely by the party-I himself. Hence, the statement of claim is liable to be dismissed in limine that the statement of claim is bound to be defeated for non-joinder of necessary parties and that from the averment made in the statement of claim, the Party-I has not furnished list of documents, documents and also not furnished list of witnesses as mandated under the Industrial Disputes Rules, therefore the statement of claim ought to be dismissed at the threshold.

5. The Employer stated that the Employer admitted that its establishment is situated at Utorda, Salcete, Goa. The Employer stated that the Party-I was initially issued letter of intent dated 04-06-2014 and subsequently, by letter dt. 19-06-2014, the party-I was appointed as "EDP Manager" on a probation period of six months initially. The Employer stated that the Party-I was a manager and head of EDP Department who had full control of EDP Department and he used to supervise the work designated by him to his subordinates. The Employer stated that the Party-I had also all the managerial as well as supervisory powers of EDP Department and that had powers to sanction leave of the staff working under him in his department. The Employer admitted that after his probation period, the Workman was confirmed in the IT Department w.e.f. 19-12-2014. The Employer stated that the Party-I remained absent unauthorizedly from 01-11-2015 onwards and has abandoned the services of the Employer during the crucial time when EDP/IT Department was undergoing up-gradation of the EDP Services of the establishment. The Employer stated that during the up-gradation time, the presence of the party-I were required the most. The Employer stated that due to the act of the Party-I, the Wifi and IDS package was not functional resulting in guest services suffering and putting them in complete hardship. The Employer stated that due to the abandonment of service of the Party-I, they had to face mental trauma

and huge financial loss to them since the system (EDP) were not operational. The Employer stated that the party-I was very adamant in his approach and under the garb of industrial dispute wanted to extort money from them by abusing the process of law. The Employer submitted that the reference is bad in law and the alleged dispute is frivolous, founded on distortion of facts and is a mere abuse of law. The Employer stated that the party-I was EDP Manager, who controlled the entire EDP/IT Department. The Employer submitted that the Party-I was EDP/IT Manager and his duties were to supervise and guide the staff working under him. The Employer submitted that for installation of hardware and software and troubleshooting of hardware and software, it requires special qualification, skill and expertise for which the party-I was appointed as EDP manager so as to manage and supervise the EDP Department. The Employer stated that the Party-I has himself abandoned the services without any notice to them and therefore the payment of retrenchment compensation does not arise. The Employer stated that the Party-I is also not entitled for gratuity as per the law since he does not fulfilled the criteria under the payment of gratuity act. The Employer denied the entire case as pleaded by the Party-I and prayed for rejection of the present reference.

6. Thereafter, the Party-I filed his re-joinder on 05-07-2017 at Exb. 7. The Party-I, as and by way of his re-joinder, confirms and reiterates all his submissions, averments and statements made in his Claim Statement to be true and correct and denies all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to his Statement and averments made in his Claim Statement.

7. Based on the pleadings filed by the respective parties, this court framed certain issues on 19-07-2017 at Exb. 8.

1. Whether the Workman/Party I proves that he is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947?
2. Whether the Workman/Party-I proves that the action of the Employer in refusing him employment w.e.f. 3-11-2015 is illegal and unjustified?
3. Whether the Employer/Party-II proves that the present order of reference is bad-in-law in view of the reasons stated in para I (ii), (iii), (iv) and (v) by way of preliminary objections?
4. Whether the Employer/Party-II proves that the Party-I was primarily performing the duties of managerial and supervisory in nature?

5. Whether the Employer/Party-II proves that the Party-I abandoned his service without any notice?
6. Whether the Workman/Party-I is entitled to any relief?
7. What order? What award?
8. My answers to the aforesaid issues are as under:
  - (a) Issue No. 1 : In the affirmative.
  - (b) Issue No. 2 : In the affirmative.
  - (c) Issue No. 3 : In the negative.
  - (d) Issue No. 4 : In the negative.
  - (e) Issue No. 5 : In the negative.
  - (f) Issue No. 6 & 7: As per final order.

#### REASONS

I have heard the oral arguments of Ld. Adv. Shri S. Gaonkar, appearing for the Party-I as well as Ld. Adv. Shri D. Naik representing the Employer.

9. Ld. Adv. Shri S. Gaonkar appearing for the Party-I, during the course of his oral arguments, submitted that the Party-I was appointed as EDP Technician by the Employer and was confirmed in the service w.e.f. 19-12-2014. He submitted that though the Party-I was appointed as EDP Technician, he was designated as EDP Manager only to take him out of the permit of I.D. Act, 1947. He submitted that the Party-I was not having powers of managerial or supervisory and he was physically performing the work of EDP Technician. He submitted that on 03-11-2015 the Party-I was instructed not to join duty by HR-Manager Mrs. Kritika Khapne. He submitted that the Party-I, after waiting for a period of 15 days, made a representation to the Management and thereafter raised an industrial dispute of refusal of employment w.e.f. 03-11-2015 through his union before the Dy. Labour Commissioner, Margao. He submitted that the Party-I was performing his duties as per the orders and instructions from the General Manager of Employer as per the terms of appointment. He submitted that the duties of the Party-I were of Technical nature such as installation of hardware and software, troubleshooting of hardware and software sending mails and feeding the data, mounting of Wifi access point on the pole by carrying laden, changing batteries of UPS periodically, servicing of computers, printers etc. He submitted that the Party-I was performing the work of IT Technician and was feeding the programme of EDP/IT Department. He submitted that the Party-I was performing the duties of clerical nature attached to the EDP/IT department of the Employer. He submitted

that as the Party-I was performing the technical as well as clerical nature of work, he is a Workman as defined u/s 2(s) of the I. D. Act, 1947. He submitted that the services of the Party-I have been refused by the Employer w.e.f. 03-11-2015 without issuing any show cause notice nor issued charge-sheet not conducted domestic inquiry pertaining to his alleged misconduct of abandonment. He submitted that the Party-I was also not issued one month notice or one month pay in lieu of notice, retrenchment compensation etc. He therefore submitted that the action of the management of the Employer is in violation of the principles of natural justice as well as in violation of Section 25F, 25H and 25 G of the I. D. Act of 1947. He submitted that non-compliance of the provisions of law, the action of the management in terminating the services of the Party-I is illegal, unjustified and bad-in-law. He submitted that from the date of termination of the services of the Party-I, he is unemployed and could not succeed in getting alternate employment. He submitted that this Hon'ble Court may pass an award holding that the action of the management of the Employer in refusing the employment to the Party-I is illegal and unjustified and direct the Employer to reinstate the Party-I with full back wages along with continuity in service and consequential benefits thereof. In support of his oral contention, Ld. Adv. S. Gaonkar relied upon the following judgments of Hon'ble High Court of Bombay.

1. In the case of **Procter and Gamble Ltd. V/s. Anup Desai** reported in (2021) 4 Bom. CR 621.

2. In the case of **Damodar Mangeshkar V/s. Cidade de Goa and ors.** reported in 2021 (6) MH. LJ 677.

3. In the case of **VFC Industries Pvt. Ltd. V/s. Balu Ganpat Satpal** reported in 2006 (6) MH LJ 535.

4. In the case of **Gangaram K. Medekar V/s. Zenith Safe Manufacturing Company and ors.** reported in 1996 (1) LLM 703.

5. In the case of **Gwalior Investment Co. Pvt. Ltd. V/s. K. M. Desai, Member, Industrial Court and ors.** reported in (1992 ) 65 FLR 489.

6. In the case of **Bhatiya General Hospital and anr. V/s. Hanmant Anandrao Raje and ors.** reported in 2023 SCC online Bom. 1105.

He also relied upon the two judgements of Hon'ble Apex Court,

7. In the case of **G. T. Lad and ors. V/s. Chemicals and Fibres of India Ltd.** reported in (1979) 1 SCC 590.

8. In the case of **Deepali Gundu Survase V/s. Kranti Junior Adhyapak Mahavidyalya and ors.** reported in (2013) 10 SCC 324.

10. Per contra, Ld. Adv. Shri D. Naik, representing the Employer, during the course of his oral arguments, submitted that the Party-I was issued a letter of intent dt. 4-6-2014 by which he was issued an offer as EDP Manager on a monthly salary of Rs. 40500/-. He submitted that the Party-I was appointed as EDP Manager on a salary of Rs. 40500/- per month. He submitted that the Party-I was the head of the EDP Department was having the full control of EDP Department. He submitted that he used to direct and supervise the work to his subordinates Mr. Gouresh Borkar, EDP Assistant and Mr. Soham Chari – Industrial Trainee. He submitted that the Party-I was having all managerial and supervisory powers of EDP Department. He submitted that the Party-I was also the leave sanctioning authority of the staff working under him in his Department. He submitted that the Party-I used to attend the meeting on every day except Saturdays and Sundays along with other managers. He submitted that the Party-I is to control the entire EDP/IT Department of the Employer establishment during his tenure of EDP Management. He submitted that the Party-I being EDP Manager was primarily performing the duties of Managerial and Supervisory in nature and as such the Party-I is not a Workman as defined u/s 2(s) of the I.D. Act, 1947. He submitted that since the Party-I is not a Workman as defined u/s 2(s) of the I.D. Act, 1947, this Hon'ble Court has no jurisdiction to entertain and try the alleged dispute and the order of reference is bad-in-law. In support of his oral contention, Ld. Adv. D. Naik relied upon the following judgments of Hon'ble High Court of Bombay.

01. In the case of **21st century Printers Ltd., Mumbai V/s. A. P. Abraham and anr.** reported in 2008 III CLR 616.

02. In the case of **Nagesh Priolkar, Ponda, Goa V/s. Manager (Personnel and Administrative), M/s E Merck (India) Ltd. Goa and anr.** reported in 2017 III CLR 805.

03. In the case of **M/s. Taj Sats Air catering Goa Unit V/s. Mr. Mankayil Poulouse Jose and anr.** reported in 2022 (I) JLR 472.

He also relied upon the following judgments of Hon'ble High court of Delhi:

04. In the case of **V. K. Sharma V/s. Govt. of NCT of Delhi and anr.** reported in 2008 II CLI 971.



05. In the case of **Anitha Mathur v/s. Idea Cellular Ltd.** reported in 2012 1 LLJ 701.

06. In the case of **Subhash Kumar v/s. Manoj Reparing and Job works** reported in 2020 I CLR 605.

07. In the case of **Jagbir Singh Malik v/s. Energy Infrastructure India Ltd.** reported in 2023 II CLR 255.

He also relied upon the following 2 judgments of High court of Gujarat and a judgment of Hon'ble High Court of Madras, Calcutta and a judgment of Hon'ble Apex Court.

08. In the case of **Kusters Calico Machinery Pvt. Ltd. v/s. Mayur Kumar J. Pathak and ors.** reported in 2016 I CLR 979 of Hon'ble High Court of Gujarat.

09. In the case of **Essar Project Ltd. v/s N D Jagdishwara** reported in 2016 I CLR 190 of Hon'ble High Court of Gujarat.

10. In the case of **Ess dee Aluminium Ltd. v/s. State of West Bengal and ors.** reported in 2018 I CLR 504 of Hon'ble High Court of Culcutta.

11. In the case of **Employees State Insurance Corporation Medical Officers Association V/s. ESIC and anr.** reported in 2014 1CLR 1 of Hon'ble Supreme Court of India.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by Ld. Adv. Shri S. Gaonkar appearing for the Workman. I have also carefully considered the submissions advanced before me and is of the considered opinion as under:

11. Issue No. 1 and 4:

I am deciding the Issue No. 1 & 4 simultaneously as both the said issues are co-related to each other.

12. Since, the Employer denied the status of the party-I as the Workman as defined u/s 2(s) of the I. D. Act, 1947, the burden was cast on the Workman to prove that he is a "workman" as define u/s 2(s) of the I. D. Act, 1947. Similarly, Since the management contended that the party-I was primarily performing the duties of managerial and supervisory in nature, the burden was cast on the Employer to prove the same.

13. Section 2(s) of the I. D. Act, 1947 has defined the term of "workman" and as such it is necessary to read the section as under.

Section 2 (s) of the I.D. Act, 1947 defines the term 'workman' and it means "any person (including an apprentice) employed in any industry to do any

manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purpose of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has led that to that dispute, but does not include any such person.

- (1) Who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or
- (2) Who is employed in the police service or as an Officer or other employee of a person or
- (3) Who is employed mainly in a mangerial or administrative capacity
- (4) Who being employed in a supervisory capacity draws wages exceeding Rs. 1,600/- per month or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

14. In the case of **H. R. Adyanthaya v/s Sandoz (I) Ltd.** reported in 1994 (69) FLR 593 the Hon'ble Supreme Court of India held that a person claiming to be a "workman" under the I. D. Act, 1947 must show that he was employed to do the work of any of the category which of manual, unskilled, skilled, technical, operational, clerical or supervisory and that is not enough that he was not covered by either of the four exceptions to the definition of the workman.

"15. In the case of **Management of M/s Sonepate Co-operative Sugar Mills Ltd. v/s Ajit Singh** reported in 2005 LAB IC 1315, the Hon'ble Supreme Court of India observed that the question as to whether the Employee has been performing a clerical work or not is required to be determined upon arriving at the findings as regards the dominant nature of duty with a view to give effect to the expression to do "any manual unskilled, skilled, technical, operational, clerical or supervisory work", the job of the concerned employee must fall within one or other category thereof. It would therefore not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto, he would be a Workman".

16. In the case of **Bhatia General Hospital and anr. (Supra)**, the Hon'ble High Court of Bombay in para 16 and 18 observed as under:

“16. The definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947 is of wide amplitude. Four classes of employees are, however, specifically excluded from the definition of workman. An employee who is employed mainly in a managerial or administrative capacity or the one who is employed in a supervisory capacity, draws wages exceeding Rs. 10,000/- per month or exercises, either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature is, inter alia, excluded from the definition of workman. The use of the term, “mainly” underscores the dominant nature of the duty so as to fall outside the protective umbrella of the labour legislation. By its very nature, the question as to whether an employee is a workman or not is rooted in facts”.

“18. This being the nature of the definition of workman, the nomenclature of the post held by an employee is not of decisive significance. It is in the nature of the duty and not the nomenclature of the position that matters. Whether the overall consideration of the duty performed by the employee satisfies the description of the duties being either supervisory or mainly managerial nature, is the question to be posed.”

The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is well established and also applicable to the case in hand.

17. In the case of **Gwalior Investment Co. Pvt. Ltd., (Supra)** the Hon'ble High Court of Bombay in para 7 of its judgment held as under:

7..... Irrespective of the wages paid, the test to determine whether a person is a workman or not is laid down by the **Supreme Court in A. G. Raj Rao v. Ciba Giegy of India Ltd., Bombay**, the Supreme Court has held”:

“Whether a particular employee is a workman within the meaning of the expression as defined in Section 2(s) of the Industrial Disputes Act, 1947 or a person employed in a supervisory capacity the test that one must employ is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth. The definition of the expression workman clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity.”

18. Thus, in order to prove that the Party-I was a “Workman” as defined u/s 2(s) of the I. D. Act, 1947,

the Party-I has to prove that he was performing the duties of manual, unskilled, skilled, technical, operational, clerical or supervisory work. It is well settled law that whether a person is a ‘workman’ or not as defined u/s 2 (s) of the I. D. Act, 1947 has to be decided on the basis of the predominant nature of duties performed by concerned person at the relevant time, it cannot lay down any straight jacket formula.

19. In the case of **Karnataka Bank Ltd. v/s. Sunita B. Vatsaraj (SMT)**, reported in 2007 II CLR 650 the Division Bench of the Hon'ble High Court of Bombay held that “mere designation or nomenclature of the post not determinative of the duties performed by the Employer. The Hon'ble High Court further held that the term supervision means direction and control. The concerned employee must have a power to supervise, direct and control the work of another employee or employees working under him.”

20. In the case of **Vinayak Baburao Shinde v/s. S.R. Shinde and Ors.**, reported in 1985 I CLR 318, the Division Bench of Hon'ble High Court of Bombay observed as under:

7. The word “supervisor” means to oversee, that is to look after the work done by other persons. The word ‘supervision’ occurring in Section 2 (s) of the Industrial Disputes Act means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of others. This also involves a power in the person overseeing to direct and control the work done by the persons over whom he is supervising. In an industrial establishment normally there are three layers of work. One is the clerical or the manual work which is done by the workmen, the second is the supervisory work done by a supervisor, and at a higher level is the work of a manager. The last mentioned officer is normally in a position to give orders and to see that the work is done. He has got powers to lay down the norms and to direct that the work shall be done in accordance with those norms. He has also, naturally, the power to take disciplinary action and in case where applications for leave are made it is within his power to sanction or reject those applications.

9. A supervisor is distinguished from a manager in as much as he has no powers to command others to do a particular work. His function is to see that the work is done in accordance with the norms laid down by the management. If the work is done, he has to assist the workmen to do it correctly in accordance with the norms. If, however, a workman does not do the work correctly or properly, the supervisor has no power to take any disciplinary action. In the case of leave applications, a supervisor

can only recommend them and not sanction or reject them, the latter being within the jurisdiction of a manager."

21. In the case of **John Joseph Khokar v/s R.S. Bhadange & Ors**, reported in 1997 II CLR 921, the Hon'ble High Court of Bombay held as under:

"14. The position that emerges from the aforesaid discussion is that in determining the question whether a person employed by the employer is workman under Section 2 (s) of the I.D. Act or not, the court has principally to see main or substantial work for which the employee has been employed and engaged to do. Neither the designation of the employee is decisive nor any incidental work that may be done or required to be done by such employee shall get him outside the purview of workman, if the principal job and the nature of employment of such employee is manual, technical or clerical. In hierarchy of employees, some sort of supervision by the employee over the employees of the lower ladder without any control may not be itself be sufficient to bring that employee in the category of supervisor, yet if the principal job of that employee is to oversee the work of employees who are on the lower cadre of the hierarchy and he has some sort of independent discretion and judgment, obviously such employee would fall within the category of supervisor. Each case would depend on the nature of duties predominantly or primarily performed by such employee and whether such function was supervisory or not would have to be decided on facts keeping in mind correct principles where the employee possess power of assigning duties and distribution of work such authority of the employee may be indicative of his being supervisor doing supervision. In a broad sense supervisor is one who has authority of the employee may be indicative of his being supervisor doing supervision. In a broad sense supervisor is one who has authority over others. Someone who superintends and direct others. An employee who in the interest of the employer has responsibility to direct control the work done by the other workers and if the work is not done correct to guide them to do it correctly in accordance with norms shall certainly be a supervisor. A supervisory work may be contradistinguished from managerial and administrative work and, so also a supervisor from manger and administrative work. Supervisor's predominant function is to see that work is done by the workers under him in accordance with the norms laid down by the management, he has no power to take any disciplinary action".

22. In the case of **Tanojkumar B. Chatterji v/s solapur Municipal Corporation, Solapur**, reported in 2004 (2) L.L.N. 566, the Hon'ble High Court of Bombay in para 5 of its judgment held as under:

"5. Now it is well-settled in this branch of law, as in many others, that designations are not dispositive. The court has to have due regard to the real nature of duties and functions. In so far as a supervisor is concerned, he or she is one who can bind the employer by taking some kind of decision on his behalf. **National Engineering Industries Ltd. v/s Sri Kishan Bhageria [1988 (1) L.L.N. 675]**. A supervisor is one who has authority over others to superintend and direct. A supervisor may possess the authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them or to adjust their grievances or effectively to recommend such action. The work of a supervisor is distinguished from work which is of a clerical nature by the exercise of independent judgment. The decisions of the Supreme Court as well as of this court have been considered in a judgment of **Shri Justice Rebello, speaking for this court, in Union Carbide (India) Ltd. v/s. D. Samuel and others [1999 (2) L.L.N. 165]**. **The Bombay Dyeing and Manufacturing Company Ltd. v/s. R.A. Bidoo and Others [1989 (2) L.L.N. 483]** Division Bench of this court held that "a supervisor is an overseer. A person can be said to be a supervisor if there are persons working under him over whose work he has to keep a watch. A supervisor is empowered to take corrective steps if a subordinate errs in work assigned to him.

23. In the case of **Anand Regional Co-op. Oil Seeds Growers Union Ltd. v/s. Shailesh Kumar Harshadbhai Shah**, reported in (2006) 6 SCC 548, the Hon'ble Apex Court in para 15 explained the term 'supervision' as under:

"15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the section alone and that too it being a small one and relating to quality control would not answer the test."

24. The Party-I claimed that he was appointed by the Employer as a EDP Technician. However on perusal of the letter of intent dt. 4-6-2014 (Exb. 23-Cross) as well as letter of appointment dt.19-6-2014 (Exb.14) issued to the Party-I by the Employer clearly indicates that the Party-I was designated as EDP Manager. Neither the letter of intent at Exb. 23-Cross nor the appointment letter at Exb.14 issued to the Party-I, specify the predominant nature of duties and responsibilities of the Party-I.

25. The Party-I, in his pleading as well as oral evidence on records, stated that though he was designated as EDP Manager, he was not having any powers of managerial or supervisory and he was physically performing the work of EDP Technician. He stated that his normal duties were of Technical nature such as installation of Hardware and Software and Troubleshooting of Hardware and Software, sending mails and feeding the data, mounting of WI FI access points on the pole by carrying ladder himself, changing batteries of UPS periodically, servicing of computers, printers etc. He stated that in accordance with the terms of appointments, he was performing the duties as per the orders and instructions from the General Manager of the Employer. He stated that he was carrying out the aforesaid work physically and that he was not having any managerial or supervisory powers. He stated that he was performing the work of IT Technician and was feeding the programme at EDP/IT Department. He finally submitted that he was performing technical and clerical nature of work. In cross examination, the Party-I admits that his gross monthly salary was Rs. 40,500/-. He admits that he knows financial controller, sales manager, purchase and stores manager, maintenance manager, executive house keeper as all the aforesaid executives including himself used to attend with General Manager of the Employer daily on behalf of EDP Department. He admits that he had signed in the HOD Column of the leave card of Mr. Gouresh Borkar record at exb. 26-cross. He admits that he used to take the decision about the requirements of the EDP Department on behalf of the Employer. He stated that he used to address the things which has been cleared and which have been pending in the EDP Department in the said meeting. He admits that the issues which were pending in the EDP Department used to address by him. He admits that somewhere in the month of October, 2015, he was supposed to update the Software in the Employer Company and that he had done the same job in time. He stated that he had suggested for up gradation of Software in the Employer Company.

26. On the contrary, the Employer chose to examine its Area General Manager, Mr. Shivam Verma and produced on record copy of appointment letter as well as leave card of the Workman maintained by the Employer and copy of resolution along with oral evidence. The oral evidence of Mr. Shivam Verma indicates that the Party-I was initially issued a letter of intent dt. 4-6-2014 and subsequently appointed as EDP Manager on the salary of Rs. 40,500/- per month. He stated that the Party-I was a Manager and Head of EDP Department who had full control of EDP

Department and he used to direct and supervise the work designated by him to his subordinates mainly Mr. Gouresh Borkar and Mr. Soham Chari. He stated that the Party-I had all the Managerial and Supervisory powers of EDP Department and had even powers to sanction leave to the staff working under him in his Department. He stated that the Party-I used to attend the meeting every day except Saturdays and Sundays along with other managers of respective department with the General Manager of the Employer. He stated that all the decisions of the EDP Department i.e. administrative, planning, Supervision and exhibition of work of the said department was taken by the Party-I as an EDP Manager during the time of his tenure. He stated that the Party-I, being EDP/IT Manager, his duties were to manage, supervise and guide the staff working under him. He stated that for installation of hardware and software and troubleshooting of hardware and software, it requires special qualification, skill and expertise for which the Party-I was appointed as EDP Manager so as to execute, manager and supervise the EDP Department. In his cross examination, the said witness stated that he was in the employment of the employer since 26-7-2016 as a General Manager and that at the time of appointment of the Party-I, he was not in the employment of the Employer. He stated that the Employer has not produced on record any document to substantiate its statement that the Party-I was having any managerial powers but the appointment letter issued to the Party-I itself implies that the Party-I was given the managerial powers. He admits that it is written in the appointment letter of the Party-I that for all his duties and responsibilities, he will report to the General Manager and carry out his/her order/ /instructions from time to time without any lapse. He admits that the primary duties of the Party-I was of technical nature but the Party-I was given the duties to assigned the job to the subordinates, sanctioned leave and managing IDS package and WIFI and that the duties of the Party-I was IT (information and technology). He stated that he do not know if in the event of any defects in the system the Party-I used to physically repair the same. He stated that he was not employed by the Employer at the time when the Party-I used to attend the meeting everyday as stated in para 5 of affidavit-in-evidence. He admits that as per the appointment letter issued to the Party-I, he has to follow and work as per the instructions and orders of the General Manager of the Employer. He stated that the appointment letter issued to the Party-I itself shows the managerial powers given to him. He further stated that there is nothing in the letter of appointment to show that

the managerial powers were given to the Party-I on showing the appointment letter at exb. 14, and that the designation of the Party-I has been stated in the said letter of appointment issued to him. He admits that the leave card has been signed by the HR-manager of the Employer in the column signed by HRD. He stated that the HR-manager used to sign on the leave card after the EDP manager sanctioned and signed the leave card. He admits that in terms of Clause VII of the appointment letter at Exb.14, the Party-I was required to perform all the duties, jobs and responsibilities that are being entrusted to him by the management from time to time to complete satisfaction of the management. He admits that in terms of Clause 8 of the said appointment letter, the Party-I was required to work in any shift including the night shift. He admits that the contents of his affidavit in evidence filed in the present proceeding are based on the records maintained by the Employer and not his personal knowledge. This is contrary, to the verification made by the said witness of the written statement of record at Exb. 5 made by the said witness stating that certain paragraph are to his knowledge, information, document and belief. He stated that he was not working at the relevant time to prove any letter to show that the Party-I was given any authority to represent the management. He admits that one Mr. Gouresh Borkar was working in EDP Department of the Employer and he was performing the technical work. He stated that he do not have any idea if the Party-I as well as the said Mr. Gouresh Borkar were working in individual shift i.e. first shift or second shift and not together. He admits that when the Party I was employed in the Employer hotel, he was not working in the same hotel.

27. Thus, from the aforesaid evidence on record, it is crystal clear that though the Party-I was appointed as EDP manager, he was not given his duties and responsibilities in writing as an EDP Manager. The management could not produce any document to substantiate their statement that the party-I was given managerial powers. The witness examined by the Employer is hearsay as he was not in the Employment at the relevant time. As per the appointment letter issued to the Party-I does not specify his duties and responsibilities. The oral evidence of the sole witness of the management Shri Shivam Verma, its Area Manager clearly admitted that the contents of its affidavit in evidence filed in the present proceedings are based on the records maintained by the Employer and not his personal knowledge. The said witness verified the written statement of the Employer stating that the contents of para (II) 1 to 18 (part) 19 (part), 20 to 24 are true to my knowledge, information and document and belief,

which are contrary to each other. On the contrary, the oral evidence adduced by the Party-I indicates that he was performing the duties of technical nature such as installation of hardware and software and troubleshooting of hardware and software, sending mails and feeding the data, mounting of WIFI excess point on the pole, changing batteries of UPS Periodically, servicing of computers, printers etc. and that he was carrying out the aforesaid work physically. The Party-I was the leave sanctioning authority of Mr. Gouresh Borkar, EDP Assistant. Thus, the predominant nature of work of the Party-I is technical and clerical in nature and not managerial and supervisory. Thus, the Party-I is a Workman within the meaning of Section 2(s) of the I. D. Act, 1947. Hence it is held that the Party-I proved that he is the "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947. The Issue No. 1 is therefore answered in the affirmative. It is further held that Employer failed to prove that the Party-I was performing the duties of managerial and supervisory in nature. The Issue No. 4 is therefore answered in the negative.

**28. In the case of Jagbir Singh Malik (Supra),** before the Hon'ble High Court of Delhi in para 31 & 32 of its judgment held as under:

*"31. the Labour Court has passed Award dt. 07-03-2019 has held that the Appellant/Claimant is not a workman within a meaning of Section 2 (s) of the I.D. Act, 1947. Being aggrieved by the award dt. 07-03-2019, the Appellant prefers a writ petition before the High Court. Ld. Single Judge dismissed the said writ petition vide its order dt. 11-01-2023. The Appellant therefore filed letters Patent appeal before the Hon'ble Apex Court. The Hon'ble Apex Court held that the documents on record establish that the Appellant was co-ordinating with various Government authorities, he was co-ordinating with the officials in the government for procurement of land, he was playing active role in marketing, he was giving recommendation for cost cutting, he was regularly co-ordinating with lawyers engaged by the respondent company, he was filing replies to notice issued by the various authorities and describing himself as Team Leader of the legal department, he was in fact, performed all managerial activities and by no stretch of imagination it can be said that he was working as a Workman in the company as claimed by him.*

*32. In the considered opinion of this court the findings of fact arrived at by the Labour court holding the Appellant not to be a Workman is based upon*

*cogent material and the findings of the facts arrived at by the labour court have been affirmed by the Ld. Single Judge."*

The Principle laid down by the Hon'ble High Court of Delhi is not applicable to the case in hand as the facts of the case before the Hon'ble High Court of Delhi are totally different that the case in hand.

29. In the case of **Anitha Mathur (Supra)**, the **Hon'ble High Court of Delhi**, in para 3 of its judgement held as under:

*"3. On the analysis of the evidence, the Labour court concluded that the nature of work assigned to the petitioner was not of a clerical nature. She was assigned the work of preparing drafts of agreements, lease deeds, affidavit and maintaining the records and attending telephone calls of the customers. She was assigned additional duties of disposing of the grievances of the customers on behalf of the management. In 2004, the petitioner had been promoted as a senior manager on account of her good performance and had also been provided a Honda City Car in lieu of travel allowance. Although there was no such document describing nature of her duties, given the nature of the actual work performed by the petitioner, it was concluded that she did not come within the purview of Section 2(s) of the I.D. Act, 1947."*

The Principle laid down by the Hon'ble High Court of Delhi is not applicable to the case in hand as the facts of the case before the Hon'ble High Court of Delhi are totally different that the case in hand.

30. In the case of **V. K. Shrama (Supra)** the **Hon'ble High Court of Delhi**, in para 8 of its judgment held as under:

*"8. We have appreciated the aforesaid contention in the light of the findings recorded in the award passed by the Labour Court. There is not denial of the fact that the appellant was initially appointed to the post of Assistant Manager-cum-Store Keeper and subsequently he was promoted to the post of Manager with effect from 1st May, 1996. His services were also terminated when he was working as a Manager. The Labour Court has examined as to what was the nature and duties of the Manager on the basis of the evidence adduced. On appreciation, thereof it was held that the appellant was in fact discharging the duties of a Manager and was performing administrative work and also was supervising the work of other staff members in the canteen. The said conclusions and findings are based on the evidence and material referred to and relied upon by the learned Labour Court Reference was made to the evidence on record which has established that when the appellant handed over the charge, he also handed over cash of Rs. 10,000/-*

*stock register, keys of the office and also of staff canteen and stock. The said letter dated 16th February, 1999 records that the appellant has handed over charge as he was proceeding on leave. The aforesaid evidence which was adduced was not challenged as is established from a bare reading of the award passed by the learned Labour Court. Labour Court in order to arrive at its findings has examined material and evidence adduced by the parties. It has recorded that the appellant did not specifically cross examine witnesses of the management on the factum of duties of the appellant. We cannot as an appellate court, re-examine the said factual findings. It cannot be said that the award is based on no material or ignores relevant material. Therefore, the learned Single Judge was justified in coming to the conclusion that interfering with the aforesaid findings would amount to interfering with findings of fact, which the Writ Court could not have done."*

The Principle laid down by the Hon'ble High Court of Delhi is not applicable to the case in hand as the facts of the case before the Hon'ble High Court of Delhi are totally different that the case in hand.

31. In the case of **twenty first century printers Ltd. Mumbai(Supra)**, the **Hon'ble High Court of Bombay** in para 6 of its judgment held as under:

*"6. "The function of purchasing i.e., acquiring from the market, materials and machinery, sometimes of considerable value, necessary for carrying out manufacture is clearly not operational, clerical or supervisory. The work involves having knowledge of machinery or material which are required to be purchased and the market. This knowledge is specialized and necessary to enable the employee to carry out purchases which may be of considerable value. It is not necessary that the knowledge must have been acquired by training. But may also come by experience of that particular work. In **Bombay dyeing and Manufacturing Co. Ltd v/s R.A.- Bidoo (1989 ICLLR 248)** a Division Bench of this court while expounding on the words "technical" & "technical work" observed as follows.....*

*"Technical work requires a training or knowledge or expertise of a particular art or science to which that work pertains. It is not difficult to infer from this that a person engaged in a technical capacity must have some knowledge imparted to him or must have acquired some knowledge either by training or by experience to do that particular work. A person who has not been so trained or who has not so acquired the knowledge naturally cannot perform, at least satisfactorily, the work to which he has been assigned. The word technical embraces within itself not only the expertise or competence of a person, but also knowledge and experience relating to the particular work which may be said to be technical work."*

The Principle laid down by the Hon'ble High Court of Bombay is not applicable to the case in hand as the facts of the case before the Hon'ble High Court of Bombay are totally different that the case in hand.

32. In the case of **Nagesh Priolkar, Ponda, Goa (Supra), before the Hon'ble High Court of Bombay**, the petitioner was appointed as a Trainee Jr. Production Assistant with the Respondent No.1 and subsequently promoted as 'Supervisor' w.e.f. 01-06-1991. His services were terminated w.e.f. 08-07-1992. The petitioner raised the dispute before the Industrial Tribunal-cum-Labour Court, Panaji, Goa. The Tribunal held that on appreciation of evidence on record came to the conclusion that the Petitioner was not a Workman as he was working as supervisor and drawing wages in excess of Rs. 1600/- per month and this excluded by Clause VI of Section 2(s) of the I.D. Act. The petitioner challenged the award dt. 3-8-2007 passed by the Industrial Tribunal-Labour Court, Panaji in writ petition before the Hon'ble High Court, Bombay. The Hon'ble High Court of Bombay dismissed the petition.

The facts of the aforesaid case before the Hon'ble High Court of Bombay, is totally different than the case in hand. Hence, the principles laid down by the Hon'ble High Court.

33. **M/s Taj Sats Air Catering, Goa unit (Supra), before the Hon'ble High Court of Bombay**, by order dt. 15-11-2016, the Petitioner terminated the services of the Respondent. The Respondent challenges the termination of services before the Tribunal. By impugned order dt. 25-10-2018, the Tribunal held that the Respondent No. 1 was indeed a "workman" u/s 2 (s) of the I.D. Act, 1947, and the charges of misconduct levelled against him were not proved to the satisfaction of the Tribunal. The Petitioner has challenged the aforesaid order by contending that the Respondent No. 1 is not a "workman" and that therefore the Tribunal could not have entertained the complaint filed by Respondent. The Hon'ble High Court observed that the dominant nature of the duties being performed by the Respondent No. 1 was supervisory and managerial rather than merely performing manual work. As against this the Respondent No. 1 failed to produce positive evidence in support of his contention that he was doing manual work of repair as claimed in his complaint, therefore it found that the Tribunal erred in holding that the Respondent No. 1 was covered under the definition of workman as per Section 2(s) of the I.D. Act.

The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is not applicable to the case in hand as facts of the case in hand are totally different than the case before the Hon'ble High Court of Bombay.

34. In the case of **Management of Athoor Tudhupettai Primary Agriculture Co-op. Bank Ltd. represented by its special officer (supra) before Hon'ble High Court of Madras**.

The first Respondent was appointed as Peon in the Bank on 01-01-1964. On 19-7-1993, he became the Secretary of the Society. His services were terminated on account of commission of several irregularities in the payment of gratuity of loan to the members of the bank. His services were terminated on 3-12-1999, on account of the gravity of charges and in view of the facts that a criminal case was registered against him. The first Respondent had raised a dispute u/s 2 A (2) of the I.D. Act, the Labour Court Salem had rejected the preliminary objection i.e. The first Respondent was not a "workman" within the meaning of Section 2(s) of the I.D. Act, 1947, and hence the industrial dispute was not maintainable. In writ petition, the Hon'ble High Court held that the labour court had failed to note that if a person is employed mainly on supervisory capacity and drawing salary beyond Rs. 1600/- (at the relevant time) he cannot be a "workman" within the meaning of Section 2(s) of the I.D. Act, 1947. The Hon'ble High Court allowed the writ petition and the impugned award stands set-aside.

The principle laid down by the Hon'ble High Court of Madras in its aforesaid case is not applicable to the case in hand as facts of the case in hand are totally different than the case before the Hon'ble high Court of Madras.

#### *Issue No. 2:*

The Party-I challenged his order of termination by alleging that the action of the management of the Employer is illegal and unjustified as the Employer has violated Sections 25F, 25G and 25H of the I.D. Act, 1947. The burden was cast on the Party-I.

35. While deciding the issue No. 1 is hereinabove, I have discussed and come to the conclusion that the Party-I proves that he is a "workman" within the meaning of 2(s) of the I.D. Act, 1947. The oral evidence of records indicates that neither the Workman was issued any show cause notice nor any charge-sheet nor conducted any inquiry pertaining to alleged act of abandonment. The oral evidence of record indicates that the services of the Workman have been refused on the alleged account of his absenteeism. The said refusal of services of the Workman amounts to retrenchment of his services. Section 25F of the I.D. Act, 1947 provides for the conditions precedent to retrenchment to the Workman and its read as under:

Section 25-F: Conditions precedent to retrenchment of workmen.— No Workman employed

in any industry who has been in continuous service for not less than one year under an Employer shall be retrenched by the Employer until—

- (a) the Workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the Workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

Thus, bare perusal of Section 25F of the I. D. Act, 1947, it appears that for a valid retrenchment under the I.D. Act, 1947, the Employer has to give him one month notice to the Workman or one month pay in lieu of notice, payment of retrenchment of compensation and notice in the prescribed manner on the appropriate Government.

36. In the Case of **G. T. Lad and ors. (Supra)**, the **Hon'ble Supreme Court of India**, in para 5 and 6 held as under:

*"5a. Re Question No. 1: In the Act, we do not find any definition of the expression 'abandonment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the Dictionary of English Law by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment' when used in relation to an office means 'voluntary relinquishment'. It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the office to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'.*

6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to

*indicate an intention not to resume the same. In **Buckingham & Carnatic Co. v. Venkatiah**, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to a employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."*

37. In the case of **Gangaram K. Medekar (Supra)** the **Hon'ble High Court of Bombay** in para 4 of its judgment held as under:

*"4..... In the cases of voluntary abandonment of service, it is a matter of intention. It depends on facts of each case. It is a matter of inference being drawn on given set of facts. The employer unilaterally cannot say that the workman is not interested in employment. It is for this reason that a domestic enquiry is required to be held. Even before the Labour Court, the employer is required to prove clearly be evidence that the workman had voluntarily abandoned his service. If the Labour Court finds that there is no evidence led by the employer and if the Labour Court finds that it is word against word, then the benefit goes to the workman and not the employer. The primary onus to lead evidence to prove voluntary abandonment of service is on the employer."*

The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is well established and also applicable to the case in hand.

38. In the case in hand, neither the Workman was issued one month notice nor paid one month pay in lieu of notice nor paid a retrenchment compensation and as such the termination of services of the Workman is illegal and unjustified. The Workman, in his claim statement filed in the present proceedings as well as in his oral evidence stated that a new Workman was appointed on his place of work and as such a management was violated Section 25-G and 25-H of the I.D. Act, 1947. However, there is nothing on record that the Employer has appointed new person all the place of the Workman and as such the Workman failed to prove that the Employer has violated Section 25-H and 25-G of the I. D. Act, 1947.

39. The Employer in its written statement as well as in the oral evidence stated that the Party-I remained absent unauthorisely from 1-11-2015



onwards and as abandoned their services during the crucial time. The sole witness of the Employer Mr. Shivam Verma in his cross examination admitted that neither show cause notice nor any charge-sheet was issued to the Workman pertaining to the alleged act of abandonment. There is nothing on record to show that the Employer has conducted domestic inquiry pertaining to the alleged act of abandonment of the Workman. Thus, the Employer failed to prove that the Party-I has abandoned the services without any notice. Hence, it is held that the Employer failed to prove that the Party-I abandoned his service without any notice. The Issue No. 5 is therefore answered in the negative.

40. In the case of **Subhash Kumar (Supra)**, the **Hon'ble High Court of Delhi** in para 6 & 7 held as under:

*"6. The facts would that on various occasions, the management had given repeated opportunities to the workman to join work but he consistently played truant. Even after joining his duties on 3-7-2008, he left the place of work at 1.30 p.m. His voluntary choosing to refrain from work cannot be a cause for any liability or wrong on the part of management. In the circumstances, the Court finds no reason to interfere with the impugned order which found that the Workman had absented himself from his duties willfully and unauthorizedly, without his services being terminated by the management. The workman had himself not reported for work. No fault of the management is made out. Therefore, he would not be entitled to any benefits.*

*7. In view of the above, the petition being without merit, is dismissed along with the pending application."*

The principle laid down by the Hon'ble High Court of Delhi in its aforesaid case is not applicable to the case in hand as facts of the case in hand are totally different than the case before the Hon'ble High Court of Delhi.

#### Issue No. 3:

41. The Employer, as and by way of its preliminary objections, submitted that the Party-I is not a Workman as defined u/s 2(s) of the I.D. Act, 1947, that the present case does not fall under I. D. Act and hence this court has no jurisdiction to entertain and try the same, that the nature of relief sought by the Party-I is founded on a cause of action purportedly arising from and act committed only by the Party-I himself. Hence, the Statement of Claim is liable to be dismissed in limine that the statement of claim is bound to be defeated for non-joinder of necessary parties and that from the averment made in the Statement of Claim, the Party-I has not furnished lists

of documents, and also not furnished list of witnesses as mandated under the Industrial Disputes rules, therefore the statement of claim ought to be dismissed at the threshold. The burden was cast on the Employer to prove the same.

42. While deciding the issue No. 1 hereinabove, I have discussed and come to the conclusion that the Party-I is a "Workman" within the meaning of Section 2(s) of the I.D. Act, 1947. The Employer did not dispute that it is not an "industry" as defined u/s 2(J) of the I.D. Act, 1947. Thus, the present dispute between the Workman and the Employer pertaining to the non-employment of the Workman is an Industrial dispute within the meaning of Section 2(K) of the I.D. Act, 1947. As regards, the submissions of the Employer that the nature of relief sought by the Party-I is founded on a cause of action purportedly arising from and act committed only by the party-I himself. Hence, the statement of claim is liable to be dismissed in limine that the statement of claim is bound to be defeated for non-joinder of necessary parties, the Employer has not adduced any oral evidence to that effect.

In view of above it is held that the Employer failed to prove that the present order of reference is bad in law in view of the reasons stated in para I (II) (III) (IV) and V by way of preliminary objections. The issue No. 3 is therefore answered in negative.

#### Issue No. 6:

43. In the case of **Deepali Gudu Surwase (Supra)** the **Hon'ble Supreme Court of India**, held as under:

*38.1. In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*

*38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

*38.3. Ordinarily, an employer or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has*

*a. to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This*

*is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once*

*b. the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

*38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that*

*c. with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found provided, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

The principle laid down by the Hon'ble Apex Court is well established and also applicable to the case in hand.

44. While deciding the issue No. I hereinabove, I have discussed and come to the conclusion that the Party-I is a "Workman" within the meaning of Section 2(s) of the I.D. Act, 1947. The Workman, in his statement of claim as well as in his oral evidence on records, stated that after his dismissal he is unemployed and could not succeed in getting alternate employment. The oral evidence on records indicates that the Workman has made an application for alternate job in the company such as Equip Pharmaceuticals, Sterling Resorts and Monginis Bakery, Verna after termination of his services and also attended the interview in the Monginis Bakery, Verna. The Workman is therefore entitled for reinstatement in service along with full back wages and consequential benefits thereof. The Issue No. 6 is therefore answered accordingly.

In view of above, I proceed the following order.

#### ORDER

1. It is held that the Party-I Mr. Chandan Phadte, Manager EDP is a Workman, within the meaning of Section 2(s) of the I. D. Act, 1947.
2. It is further held that the action of the management of M/s. Royal Orchid Beach Resort and Spa, Utorda Beach, Salcete, South Goa, in refusing employment to Mr. Chandan Phadte,

Manager EDP, with effect from 03-11-2015, is illegal and unjustified.

3. It is held that M/s. Royal Orchid Beach Resort and Spa, Utorda Beach, Salcete, South Goa is hereby directed to reinstate the Workman Shri Chandan Phadte with full back wages and consequential benefits thereof.

Inform the Government accordingly.

Sd/-  
(Suresh N. Narulkar)  
Presiding Officer,  
Labour Court.

#### Notification

No. 28/02/2024-LAB/Part-I/116

The following Award passed by the Labour Court-II, at Panaji-Goa on 10-01-2024 in Case No. LC-II/IT/13/2013 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Asha Harmalkar, Under Secretary (Labour).

Porvorim, 16th February, 2024.

IN THE LABOUR COURT-II  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble  
Presiding Officer)

Case No. LC-II/IT/13/2013

Ms. Dattakumar V. Shet,  
Rep. by the President,  
Goa Trade and Commercial Workers Union,  
Panaji-Goa. .... Workman/Party I  
V/s

M/s. Funskool (India) Pvt. Ltd.,  
Corlim, Tiswadi-Goa. .... Employer/Party II  
Workman/Party I represented by Ld. Advocate Shri  
Suhas Naik.

Employer/Party II represented by Ld. Advocate Shri  
G. K. Sardessai.

Panaji, Dated: 10-01-2024

#### AWARD

1. In exercise of the powers conferred by Section 10 (1) (d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order

dated 12-04-2013, bearing No. 28/10/2013-Lab/162, referred the following dispute for its adjudication to the Industrial Tribunal of Goa. The Presiding Officer, Industrial Tribunal cum Labour Court in turn assigned the present dispute to this Labour Court-II of Goa at Panaji, Goa vide her order dated 17-04-2013.

*“(1) Whether the action of the Management of M/s. Funskool (India) Private Limited, Corlim, Goa, in dismissing the services of Shri Dattakumar V. Shet, Junior Technician-cum-Operator-cum-Assembler, with effect from 15-01-2011, is legal and justified?”*

*“(2) If not, to what relief, the workman is entitled?”*

2. On receipt of the reference, a case was registered under No. LC-II-IT/13/2013 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Part-I (for short ‘Workman’), filed his Statement of Claim on 01-07-2013 at Exb. 4. The facts of the case in brief as pleaded by the Workman are that he was employed with the Employer/Party-II (for short ‘Employer’) as Junior Technician-cum-Operator-cum-Assembler. The Workman stated that he was an unionized member and was the President of the local union committee and as such was a protected Workman under the provisions of the I.D. Act, 1947. He stated that being office bearer of the local committee member, he was always espousing the cause of the workmen at the shop-floor and for taking up the grievances of the workmen for its redressal before the management of the Employer. He stated that on many occasions, the management of the Employer had warned him to remain away from legitimate trade union activities and was instructed not to take up or espouse the cause of his fellow workmen to the management of the Employer. He stated that since he did not concede to the instructions of the Employer, he has been targeted and victimized in the present case on false and bogus charges.

3. He stated that the Employer factory is engaged in the business of manufacturing toys’ play-games in a joint collaboration with HASBRO INC USA which are widely used in Indian and foreign markets. He stated that the product manufactured by the company has exclusive monopolistic demand in market that is spread all over the country as well as foreign markets. He stated that the Employer is employing more than 300 workmen at its factory. He stated that around 120 workmen are on the permanent roll of the Employer for last more than 15

to 20 years of continuous service. He stated that though these workmen are working in this factory for last many years, since its inception, they are paid very low and pathetic salary and as such he was constantly requesting the Employer to improve the wages of member workmen and to provide them with better service conditions at their workplace. He stated that however, the Employer always neglected the genuine demands of the workmen. He stated that due to the aforesaid reasons, he himself and his other colleague workmen joined the membership of Goa Trade and Commercial Workers union (AITUC) after resigning from the erst-while union vide a resolution to that effect. He stated that since thereafter AITUC is espousing his cause and his other colleague workmen, who had joined the said union.

4. He stated that he was issued a charge-sheet dated 26-02-2010 alleging certain acts of misconducts. He stated that he filed his reply to the said charge-sheet denying each and every allegation. He stated that the management went ahead to conduct an enquiry against him. He stated that Adv. P. Chawdikar was appointed as an Enquiry Officer to investigate into the acts of misconduct against him. He stated that in the enquiry, he was represented by the office bearer of the union and the management was represented by Shri. S.V. Joshi. He stated that after completing the enquiry, the Ld. Enquiry Officer submitted his findings to the management. He stated that thereafter the management dismissed him from service w.e.f. 15-01-2011.

5. Being aggrieved by the action of the Employer, the Workman challenged the same by raising an industrial dispute, which ended in failure. The Workman contended that the enquiry has been conducted by the Ld. Enquiry Officer in gross violation of the principles of natural justice. He submitted that no proper opportunity of defending was offered to him in enquiry which caused him great injustice, loss and prejudice to his defense. He submitted that Ld. Enquiry Officer arbitrarily and mechanically overruled the written objections, defense evidence and contradictions brought by him on record. He submitted that Ld. Enquiry Officer has totally acted in a biased and prejudicial manner to favour the management. He submitted that the findings given by the Ld. Enquiry Officer are non-reasoned and are given in a mechanical manner without proper reasoning in favour of the management. He submitted that no charge of whatsoever nature levelled against him in the charge-sheet dated 26-02-2010 have been proved

beyond reasonable doubt. He submitted that the findings given by Ld. Enquiry Officer are perverse and liable to be quashed and set aside. He submitted that there was no reason for Ld. Enquiry Officer for not considering the defense evidence led by him in his defense. He submitted that no reasoning of whatsoever nature has been given by Ld. Enquiry Officer for not believing the defense evidence nor discussed the defense evidence in the findings. He submitted that the findings are stretched totally in favour of the management. He submitted that he disputes and challenges the entire enquiry proceedings conducted by the Ld. Enquiry Officer in the charge-sheet dated 26-02-2010 as well as the findings of the Enquiry Officer. He submitted that Ld. Enquiry Officer has committed gross error of non-application of mind and an error of favouring the management by stretching the evidence in favour of the management. He submitted that Ld. Enquiry Officer has failed to discuss and analyze the evidence and material of the defense and merely stated that the misconducts levelled against him stands proved. He submitted that the witnesses examined by the management are managerial and supervisory staff and as such the same cannot be believed. He submitted that his dismissal from service smacks of malafide intended to take revenge on him for his legitimate trade union activities and terrorize the remaining unionized workmen as he is the President of Funkskool Workers Managing Committee. He submitted that nevertheless, the punishment of dismissal is too harsh and grossly disproportionate considering the nature of allegations. He submitted that his dismissal from service is patently illegal, unjust and bad-in-law. He submitted that the amount mentioned in the letter of dismissal dated 15-01-2011 has not been accepted by him. He submitted that he is presently unemployed and do not have any source of income to maintain himself and his family. He submitted that he has tried his level best to get employment elsewhere in many factories and establishments, however, failed to secure gainful employment. The Workman therefore prayed that the enquiry held against him vide charge-sheet dated 26-02-2010 be held as improper, unfair and the same be quashed and set aside. The Workman prayed that the findings of the Enquiry Officer be held as mechanical, non-reasoned and perverse and be quashed and set aside. The Workman also prayed that the action of the Employer in dismissing his services w.e.f. 15-01-2011 be held as illegal, unjustified and bad-in-law and he be reinstated back in service with full back wages,

continuity in service alongwith all other consequential benefits.

6. The Employer resisted the claim of the Workman by filing its written statement on 16-08-2013 at Exb. 5. The Employer, as and by way of its preliminary objections, submitted that the claim is not an industrial dispute and that the Goa Trade and Commercial Workers Union has no authority to represent the Workman.

7. The Employer stated that it is a company incorporated under the Companies Act, 1956 and it is in the business of manufacturing toys and other allied products, having its factory at Corlim, Tiswadi, Goa. The Employer stated that the Workman was employed by them as Junior Technician-cum-Operator-cum-Assembler at its factory in Corlim. The Employer stated that the management has issued show-cause notice dated 08-02-2010 and 15-02-2010 to the Workman involved in various acts of misconducts. The Employer stated that it was alleged that the Workman has deliberately refused to start the machine and stopped the work and incited other permanent workers to stop the work and also threatened temporary workers and asked them to stop the work, despite of repeated advice from his supervisor, he did not adhere to the supervisor's instructions and on 09-02-2010, the Workman stopped the work from 4. 30 to 6. 30 p.m., disobeyed the instructions from his supervisors to start the machines, incited others to stop the work, prevented the machines being operated and formed a group and gheraoed the molding shop in-charge for two hours and shouted at him. The Employer stated that the Workman filed his reply dated 10-02-2010 and 18-02-2010. The Employer stated that they did not find his explanation satisfactory. The Employer stated that the management thereafter issued a charge-sheet cum notice of enquiry dated 26-02-2010 to the Workman by which the Workman was charged for the following acts of misconducts under its Certified Standing Orders: Willful insubordination or disobedience, whether alone or in combination with another or other, of any lawful and reasonable order of a superior, riotous, indecent or disorderly behaving during working hours in the factory premises or any act subversive of discipline or efficiency, malingering or slowing down of work alone or in combination with other workmen and includes any stoppage of work in violation of company's rules and regulations, striking work either singly or with other workmen in contravention of this standing orders, any statute, law, rules or enactment for the time being in force or that may

be framed from time to time or inciting any Workman to strike work, use of impolite or insulting or abusive language rude or unruly behaviour, assault or threat of assault, either provoked or otherwise, intimidation coercion within the precincts of the company against any superior, workmen, visitors, clients or any other person authorized to work in the company and any such acts outside the premises of the company which directly affects the discipline, work or business of the company, restraining or detaining or gheraoing any superior or Workman of the company either inside or outside the premises of the company, interference with work of any other Workman or supervisor in a manner inimical or detrimental to the interest of the company, instigation, incitement, abatement or furtherance of any of the above acts or omissions.

8. The Employer stated that the management conducted an enquiry into the charge-sheet dated 26-02-2010. The Employer stated that the enquiry was conducted by Ld. Adv. Shri Prasanna Chawdikar. The Employer stated that during the enquiry the management was represented by Mr. S.V. Joshi, Manager of the Company, Mr. Dattakumar Shet was represented by Mr. Nilkant Phadte, General Secretary of his Union (CITU) as his Defense Representative. The Employer stated that the enquiry against Mr. Dattakumar Shet commenced on 01-03-2010 and was concluded on 28-12-2010. The Employer stated that the management examined Mr. Peter Gonsalves, Mr. Prasad Joshi and Mr. Sadanand Nayak as their witnesses and all the witnesses were duly cross examined by the Defense Representative.

9. The Employer stated that Ld. Enquiry Officer has followed the well-established principle and has tested the evidence of both the parties and has concluded that the management has proved the charges. The Employer stated that the findings given by the Ld. Enquiry Officer are based on the evidence on record of the enquiry. The Employer stated that the enquiry has been conducted by the Ld. Enquiry Officer in accordance with the principles of natural justice. The Employer stated that proper opportunity of defending was offered to the Workman in enquiry. The Employer stated that the Ld. Enquiry Officer considered objections if any, raised by the Workman or his representative during the said enquiry. The Employer stated that the Ld. Enquiry Officer acted in an impartial manner. The Employer submitted that the findings given by the Ld. Enquiry Officer are reasoned findings and are based on evidence on record. The Employer submitted that the quantum of punishment by way

of dismissal is proportionate to the gravity of misconducts and no interference is called for.

10. The Employer stated that the Workman was the President of local union committee of All Goa General Employees Union (CITU) at the time when he was representing its workmen. The Employer stated that the Workman continued to be a member of the said union at the time of dismissal and was at no stage a member of Goa Trade and Commercial Workers Union. The Employer stated that it negotiated and arrived at settlements dated 28-01-2000, 02-06-2003, 08-05-2006 and 05-05-2009 with the CITU and therefore, there was no cause for the management to indulge in any victimization of the office bearer of the said union. The Employer stated that there was no nexus between its action to dismiss the Workman and his association with the union.

11. The Employer stated that it has a proper dispute resolution mechanism in place. The Employer stated that it has always been sensitive to the needs of his employees and has full-fledged personnel dept. headed by the Personnel Manager for addressing the grievances of the employees. The Employer stated that as a matter of its policy allows any aggrieved employees to approach, the departmental head with his problems. The Employer stated that in case such aggrieved employee is not satisfied by the response received by the departmental Head, such employee can approach its General Manager, who heads the organization in Goa. The Employer submitted that it provides for adequate mechanism to ensure the interest of its employees is protected. The Employer, therefore, prayed that in the event enquiry is set aside on any grounds, they may be permitted to lead fresh evidence in support of its charges. The Employer, therefore, prayed that the reference does not survive and hence, be rejected.

12. Thereafter, the Workman filed his rejoinder on 17-10-2013 at Exb. 07. The Workman, by way of his re-joinder, confirms and reiterates all his submissions, averments and statements made in his Claim Statement to be true and correct and denies all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to its Statement and averments made in his Claim Statement. He stated that the Employer has no Certified Standing Orders and no Certified Standing Orders were produced at the time of holding the enquiry or even at the time of issuing the punishment of dismissal to him.

13. Based on the pleadings filed by the respective parties, this court framed the following issues on 06-11-2013 at Exb.8.

1. Whether a free, fair and impartial enquiry has been conducted against the Workman in accordance with the principles of natural justice?
2. Whether the charges of misconduct levelled against the Workman vide charge sheet dated 26-02-2010 have been proved to the satisfaction of this court by an acceptable evidence?
3. Whether the Workman proves that the action of the management of the Employer in dismissing him from the services w.e.f. 15-01-2011 is illegal and unjustified?
4. Whether the Workman proves that he has been victimized on false and bogus charges?
5. Whether the Employer/Party II proves that the reference is not maintainable in view of reasons stated in para (a) and (b) of the written statement?
6. Whether the Workman is entitled for any relief?
7. What order? What Award?

14. My answers to the aforesaid issues are as under:

- |                     |                          |
|---------------------|--------------------------|
| (a) Issue No. 1     | : In the affirmative.    |
| (b) Issue No. 2     | : In the affirmative.    |
| (c) Issue No. 3     | : In the affirmative     |
| (d) Issue No. 4     | : In the negative.       |
| (e) Issue No. 5     | : In the negative.       |
| (f) Issue No. 6 & 7 | : As per final argument. |

#### REASONS:

I have heard the oral arguments of Ld. Adv. Shri. Suhas Naik, appearing for the Workman as well as Ld. Adv. Shri G. K. Sardessai appearing for the Employer.

15. Ld. Adv. Shri Suhas Naik appearing for the Workman submitted that vide order dt. 11-07-2019 passed in the findings on the preliminary issue No. 1 & 2, this Hon'ble Court held that a free fair and proper inquiry has been conducted against the Workman in respect of charge-sheet dt. 26-02-2010 and that all the charges of misconducts levelled against the Workman vide charge sheet dt. 26-02-2010 have been proved to the satisfaction of this court by acceptable evidence. He submitted that vide his reply dt. 10-02-2010 to the show cause notice 08-02-2010, the Workman replied that he has not refused to do any work nor stopped any work nor refused to start any machine nor insisted to refuse to do the work or threatened any worker and

that they were asking for boiled drinking water for last five days and they were assured that the problem of boiled drinking water would be solved. He submitted that the management witness Mr. Peter Gonsalves (MW1) in his deposition as well as in the show cause notice named the twelve workers including the Workman, however the management has dismissed the services of the Workman only by holding an inquiry. He submitted that all the said twelve workers are permanent workers. He submitted that he was the President of the Union joined in the Employer Company in the year 1980. He submitted that the Workman, being the President of the union used to assist a management. He submitted that except the Workman, in the present reference, no action has been taken against the said eleven workers. He submitted that the Employer has failed to produce on record a Certified Standing Order before the Ld. Inquiry Officer nor produced before this Hon'ble Court and hence in the absence of the Certified Standing Order of the Employer, this Hon'ble Court has to go Model Standing Order. He submitted that the past record of the Workman was clean and unblemished. He submitted that taking into consideration the past record of the Workman as well as the existence of the mitigating circumstances, the punishment of dismissal awarded to the Workman is too severe and highly disproportionate. He submitted that this Hon'ble Court has empowered u/s 11-A of the I. D. Act to interfere with the quantum of punishment and to set aside the order of dismissal and direct reinstatement of the Workman including the award of any lesser punishment in view of dismissal. He submitted that in support of his oral contention Ld. Adv. Suhas Naik relied upon to the following judgment.

16. Per contra, Ld. Adv. Shri G. K. Sardessai representing the Employer, during the course of his arguments, submitted that the Workman was employed as Jr. Technician cum operator cum Assembler at its factory. He submitted that vide Order dt. 11-07-2019 passed in the findings on the preliminary issue No. 1 and No. 2, this Hon'ble Court held that a fair and proper inquiry has been conducted against the Workman in respect of charge-sheet dt. 26-02-2010 and that all the charges of misconducts levelled against the Workman vide charge sheet dt. 26-02-2010 have been proved to the satisfaction of this court by acceptable evidence. He submitted that the allegations of the Workman that he has been victimized on false and bogus charges is vague. He submitted that the Workman instructed the workers to stop work and

obstructed the management from recommencing the work. He submitted that he incited the workers to commit illegalities. He submitted that the Workman then submitted his regret letter dt. 19-04-2010 and admitted his responsibilities for the incidence held on 06-02-2010 and 09-02-2010. He submitted that taking into consideration the gravity of the proved misconduct, existence of aggravated circumstances and past records, the punishment of dismissal issued to the Workman is just, legal and proper and this Hon'ble court shall not interfere in the same. In support of his oral contentions, Ld. Adv. G. K. Sardesai relied upon the following judgments of Hon'ble High Court of Bombay.

1. In the case of **Sarabhai M. Chemicals (S. M. Chemical & Electronics) Ltd. V/s. M.S. Ajmere**, reported in 1980, 1 LLJ 295.
2. In the case of **Informedia India Ltd. V/s. Tata Press Employees Union**, reported in 2008 (4) LLN 770.
3. In the case of **Companies Act V/s. Shri Vishwanath N. Jadhav**, reported in 3942 of 1997.

He also relied upon the three judgments of Hon'ble Supreme Court of India.

4. In the case of **Hombe Gowde Educational Trust V/s. State of Karnataka**, reported in 2006 (1) SCC 430.
5. In the case of **Mahindra and Mahindra Ltd. V/s. N. B. Narawade**, reported in 2005 (3) SCC 134.
6. In the case of **Chairman & Managing Director, V/s. Goparaju Sri Prabhakara Hari Babu 12**, reported in (2008) 5 SCC 569.

He also relied upon one judgment of Hon'ble High Court of Delhi and a Judgment of Hyderabad.

7. In the case of **Rajendra Kuimar Dixit V/s. Management of Hindustan Times Ltd. and Anr.**, reported in 2014 1 LLJ 377.
8. In the case of **Voltal Ltd.-Allwyn Unit V/s. I Additional Industrial Tribunal-cum-Additional Labour Court, Presiding Officer, Hyderabad** reported in 2012 1 LLJ 263.

I have carefully perused the entire records of the present case including the synopsis of written arguments filed by the Employer. I have also carefully considered the submissions advanced before me.

## REASONS

17. *Issue No. 1:* Vide Order dt. 11-07-2019 passed in the findings on the preliminary Issue No. 1 and Issue No. 2 held that a fair and proper inquiry has been conducted against the Workman in respect of charge-sheet dt. 26-10-2010. The issue No. 1 is therefore answered in the affirmative.

18. *Issue No. 2:* Vide Order dt. 11-07-2019 passed in the findings on the preliminary Issue No.1 and Issue No. 2 held that all the charges of misconducts levelled against the Workman vide charge-sheet dt. 26-02-2010 have been proved to the satisfaction of this court by acceptable evidence. The Issue No. 2 is therefore answered in the affirmative.

19. *Issue No. 3:* The Party-I raised the present Industrial dispute challenging the action of the management of the Employer in dismissing his services w.e.f. 15-01-2011 as illegal and unjustified. The Party-I contended that the inquiry conducted against him is illegal and unjustified and in the findings of the Ld. Inquiry Officer is without application of mind and that he has been victimized for his union activities and that the punishment imposed upon him is too harsh and grossly disproportionate considering the nature of allegation.

20. Vide Order dt. 11-07-2019 passed on the findings on the preliminary Issue No. 1 and Issue No. 2 held that fair and proper inquiry has been conducted against the Workman in respect of charge-sheet dt. 26-10-2010 and that all the charges of misconducts levelled against the Workman vide charge-sheet dt. 26-02-2010 have been proved to the satisfaction of this court by acceptable evidence.

The only question remains to be decided is whether punishment of dismissal awarded to him is too harsh and grossly disproportionate considering the proved misconduct.

21. In the case of **Mahindra and Mahindra Ltd. (Supra)**, the Hon'ble Supreme Court of India in Para 20 held as under:

*"After introduction of Section 11-A in the Industrial disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion*

*which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment."*

23. In the case of **Hombe Gowda Education Trust and anr. (Supra)**, the Hon'ble Apex Court in Para of 17 of its Judgment held as under:

*17. The Tribunal's jurisdiction is a kin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.*

*The Hon'ble Apex Court in para 20 of its Judgment held as under:*

*"20. It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce the sentence of dismissal."*

The principle laid down by the Hon'ble Apex Court in its aforesaid cases is well established and also applicable to the case in hand.

24. Thus, after introduction of Section-11 of the I. D. Act, certain amount of discretion is vested in the Labour Court/Industrial Tribunal interfering

with the quantum of punishment awarded by the management were the Workman concerned be found guilty of misconduct. The dismissal which can be exercised u/s. 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court or the existence of any mitigating circumstances which require the reduction of sentence or the past conduct of the Workman which may persuade the Labour Court to reduce the punishment.

25. In the case in hand, the Workman was appointed as a Jr. Technician from Operator-cum-Assembler on the year 1988. He was a President of the Local Union Committee. The services of the Workman has dismissed w.e.f. 15-01-2011. The evidence of record indicates that the Workman worked with the Employer Company for around 22 years. The past record of the Workman is clean and unblemished for the said 22 years service. He was the President of the Local Union Committee as well as the Office bearer of the AITUC. The misconduct proved against the Workman are: Willful insubordination or disobedience, whether alone or in combination with another or other, of any lawful and reasonable order of a superior, riotous, indecent or disorderly behaving during working hours in the factory premises or any act subversive of discipline or efficiency, malingering or slowing down of work alone or in combination with other workmen and includes any stoppage of work in violation of company's rules and regulations, striking work either singly or with other workmen in contravention of this standing orders, any statute, law, rules or enactment for the time being in force or that may be framed from time to time or inciting any Workman to strike work, use of impolite or insulting or abusive language rude or unruly behaviour, assault or threat of assault, either provoked or otherwise, intimidation coercion within the precincts of the company against any superior, workmen, visitors, clients or any other person authorized to work in the company and any such acts outside the premises of the company which directly affects the discipline, work or business of the company, restraining or detaining or gheraoing any superior or Workman of the company either inside or outside the premises of the company, interference with work of any other Workman or supervisor in a manager inimical or detrimental to the interest of the company, instigation, incitement, abatement or furtherance of any of the above acts or omissions. The evidence on record indicates that 12 workers were charge-sheeted by the Employer;



however the management awarded the punishment of dismissal to this Workman only. The evidence on record indicates that the incident occurred on 06-02-2010, on account of failure to provide the hot water facility on 06-02-2010.

In my considered opinion, taking into consideration the past clean record of the Workman of 22 years as well as being the President of the Union the punishment of dismissal awarded to the Workman is too severe and disproportionate to the proved misconduct so as to disturb the conscience of the Court. The management should have given the punishment of four days suspension to the Workman. It is therefore held that the action of the management of the Employer in dismissing him from the service w.e.f. 15-01-2011 is illegal and unjustified.

**26. In the case of Mahindra and Mahindra Ltd. (Supra)**, before the Hon'ble Supreme Court of India, the Workman was dismissed by the Employer for the proved misconduct of abusing his superior in a filthy language without any provocation by holding an inquiry. The Labour Court came to the conclusion that the punishment of dismissal issued to the Workman over harsh and improper and hence deserves to be set aside and substituted the said punishment the Respondent reinstatement with continuity of service but with 2/3rd back wages w.e.f. 05-03-1993. Being aggrieved by the decision of the Labour Court the Appellant preferred a writ petition before the Ld. Single Judge of Hon'ble High Court of Bombay which has been dismissed. Against the said order of Ld. Single Judge the Appellant preferred writ appeal before the Division Bench of the Hon'ble High Court which has been also dismissed. Hence the management filed appeal before the Hon'ble Apex Court which has been allowed.

The principle laid down by the Hon'ble Apex court in its aforesaid judgment is distinguishable and is not applicable to the case in hand.

**27. In the case of Hombe Gowda Education Trust and anr. (Supra)**, before the Hon'ble Apex Court, the Respondent No. 3 was a lecturer in the Appellant institution. The Respondent No. 3 was subjected to disciplinary proceedings on an allegation that he had assaulted the principal of Appellant 2 with Chappal. He was found guilty of the said charge and dismissed from service. An appeal was preferred before the Educational Appellant Tribunal, the Tribunal held that first charge has not been satisfactory proved by cogent and acceptable evidence. Despite holding that although it could be said that Respondent No. 3

acted in retaliation to the action of the Principal but such conduct was not justifiable, he opined that the assault by Respondent No. 3 on the Principal was proved. However, he awarded punishment of withholding of pre-increment only in plea of the order of dismissal passed by the Appellant. Aggrieved, the Management State of Karnataka, as Resp. No. 3 preferred separate writ petition before the Karnataka High Court. The High Court held that the Appellant should be directed to pay back wages to the extent of 60% only. It was further held that though the primary liability to make such payment is that of the management, when the management could claim the same by way of advance grants or by way of reimbursement from the Government its liability to pay the said amount cannot be disputed. Both the management as also the State filed the appeal before the Apex Court. The Hon'ble Apex court held that the impugned judgment cannot be sustained which are set aside accordingly. The Appeals are allowed.

The principle laid down by the Hon'ble Apex Court is distinguishable from the case in hand and as such is not applicable to the case in hand.

**28. In the case of Sarabhai M. Chemicals Ltd. (Supra)**, before the Hon'ble High Court of Bombay in Para 25 held as under:

*"25. A stenographer is an essential part of any commercial or administrative office. If lawful orders are disobeyed by him, it is not necessary to measure in terms of money the loss that may be caused or the inconvenience that may be caused in order to decide whether he should be punished in the course of a departmental enquiry or not. The very fact that a responsible employee like a stenographer indulges in deliberate disobedience of lawful orders, in our view, is sufficient to warrant a punishment of dismissal."*

The facts of the aforesaid case before the Hon'ble High Court of Bombay, are totally different then the case in hand and as such the principle laid down by the Hon'ble High Court in Bombay is not applicable to the case in hand.

**29. Issue No. 4:** The Workman alleged that he has been victimized on false and bogus charges. The burden was cast on the Workman to prove the said Issue No. 4.

Indisputably, vide order dt. 11-07-2019, passed in my findings on the preliminary Issue No.1 and Issue No. 2 this Hon'ble court discussed and held that all the charges of misconducts levelled against the Workman vide charge-sheet dt. 26-02-2010 have been proved to the satisfaction of this Court by acceptable evidence.

30. **In the case of Informedia India Ltd. (Supra)**, the Hon'ble High Court of Bombay, held that:

..... Once the charge of misconduct was established, the allegation of victimization, as the Supreme Court has held in *Bharat Forge Company (2005 (1) L.L.N.625) (vide supra)*, would lose its significance particularly, in the absence of any cogent evidence in regard to victimization in the present case. Similarly, the Labour Court was entirely in error in holding that the management had not moved the Labour Court for a declaration in regard to the illegality of the strike. From the evidence, including the admissions of the charge-sheeted workman it was evident that there was a concerted stoppage of work upon the instructions of a representative of the union and that the workmen had stopped work both on 22 August, 1990 and 14 September, 1990.....

The principle laid down by the Hon'ble High Court of Bombay, is well established and also applicable to the case in hand.

31. In the case in hand, indisputably, vide order dt. 11-07-2019, passed in my findings on the preliminary Issue No. 1 and Issue No. 2 this Hon'ble court discussed and held that all the charges of misconducts levelled against the Workman vide charge-sheet dt. 26-02-2010 have been proved to the satisfaction of this Court by acceptable evidence. Once therefore, the charge of misconduct have been proved the allegations of victimization lose its significance. The Workman also did not produce on record any cogent evidence to prove that he has been victimized on false and bogus charges. Hence, it is held that the Workman failed to prove that he has been victimized on false and bogus charges. The Issue No. 4 is therefore answered in the negative.

32. *Issue No. 5:* The Employer, as and by way of its preliminary objections, submitted that the reference is not maintainable as the claim is not an industrial dispute and that the Goa Trade and Commercial workers union has no authority to represent the Workman. The burden was cast on the worker to prove the same.

In the case in hand, it is not in dispute that the Party-I is a "workman" as defined u/s 2(s) of the I. D. Act, 1947 and the Party-II is an "industry" as defined u/s 2(j) of the I. D. Act, 1947, and as such the dispute raised by the Party-I pertaining to non-employment is an industrial dispute as defined u/s 2(k) of the I. D. Act, 1947.

33. As regards, the authority of the Goa Trade and Commercial Workers Union, the evidence on record indicates that the Workman was the

president of Local Union Committee of all Goa General Employees Union (CITU) at the time he was representing the Workman of the Employer company and he continued to be a member of the same union at the time of dismissal. It has also come on record that the Workman was also a member of Goa Trade Commercial Workers Union.

Hence, it is held that the Employer failed to prove that the reference is not maintainable in view of reasons stated in para (a) and (b) of the written statement. The issue No. 5 is therefore answered in the Negative.

34. *Issue No. 6:* While deciding the Issue No. 3 hereinabove I have discussed and come to the conclusion that the action of the management of the Employer in dismissing from his services w.e.f. 15-01-2011, is illegal and unjustified. The evidence on records indicates that after dismissal of services of the Workman he was unemployed from the period from 15-10-2011 till November, 2015, he was unable to find job though he tried his level best to secure job and November, 2015 till date, he is employed. The Workman is therefore not entitled for reinstatement in service of the Employer Company. The Workman is however entitled for back wages from the period from 15-10-2011 till November, 2015. Thus, taking into consideration the wages of the Workman and his unemployment, the Workman is entitled to a lumpsum compensation of Rs. 1,50,000/- towards back wages.

In view of above, I proceed to pass the following order:

#### ORDER

1. It is held that the action of the management of M/s Funkskool (India) Private Limited, Corlim, Goa, in dismissing the services of Shri Dattakumar V. Shet, Junior Technician-cum-Operator-cum-Assembler, with effect from 15-01-2011, is illegal and unjustified.
2. It is held that the management of M/s Funkskool (India) Private Limited, Corlim, Goa, is hereby directed to pay to the workman Shri Dattakumar V. Shet an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand only), towards the back wages.

Inform the Government accordingly.

Sd/-  
(Suresh N. Narulkar)  
Presiding Officer,  
Labour Court.

Department of Law & Judiciary  
Law (Establishment) Division

**Notification**

No. 6-28-92/LD(Misc-I)(Estt)/Misc-I/733

Read: Government Notification No. 6-28-92/  
/LD(Misc-I)(Estt)/Misc-I dated 16-02-2022.

In exercise of the powers conferred by Clause (c) of sub-section (2) of Section 6 of the Legal Services Authorities Act, 1987 (Central Act 39 of 1987) (hereinafter referred to as the "said Act"), read with sub-rule (3) of Rule 3 of the Goa State Legal Services Authority Rules, 1996, the Government of Goa, in consultation with the Hon'ble Chief Justice of the High Court of Bombay, hereby nominates the following persons as non-official members of the State Legal Services Authority, with immediate effect.

1. Shri Guruprasad Pawaskar, Chairman, Goa State Commission for PWD, Panaji-Goa.
2. Shri Ramchandra G. Ramani, Ld. Senior Advocate, Panaji-Goa.
3. Ms. Norma Alvares, Ld. Advocate, Mapusa-Goa.
4. Shri Pritam Morais, Ld. Advocate, Margao-Goa.
5. Shri Jatin Ramaiya, Ld. Advocate, 340, Gera's Imperium Star, Patto, Panaji-Goa.

6. Shri V. B. Prabhu Verlekar, Chartered Accountant, Govinda Building, M.G. Road, Panaji-Goa.

7. Dr. Vijay Gawas, Associate Professor, Manohar Parrikar School of Law, Dona Paula, Goa.

8. Dr. Amol Mahaldar, Consultant Nephrologist.

9. Shri Bosco George, Retired Deputy Inspector General of Police.

10. Ms. Swati Kamat, Ld. Advocate, Panaji-Goa.

11. Ms. Maria Correia, Ld. Advocate, Panaji-Goa.

12. Shri Ravi Kudalkar, Ld. Advocate, Bicholim-Goa.

The above members shall be entitled to travelling and daily allowance as prescribed under sub-rule (4) of Rule 5 of the Goa State Legal Services Authority Rules, 1996.

The other terms and conditions will be governed as per the Goa State Legal Services Authority Rules, 1996.

This issues in supersession of the earlier Government Notification No. 6-28-92/LD(Misc-I)(Estt)/Misc-I dated 16-02-2022.

By order and in the name of the Governor of Goa.

*Amir Y. Parab*, Under Secretary (Law-Estt.).

Porvorim, 28th March, 2024.

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